IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
DEPARTMENT NO. 505

LESLIE J. WHITELEY AND)
LEONARD WHITELEY,)
PLAINTIFFS,)
VS.) NO. 303184
RAYBESTOS-MANHATTAN, INC., ET)
AL.,)
DEFENDANTS.)
___________________________________)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TUESDAY, JANUARY 18, 2000
(VOLUME 5, PAGES 568-730)

REPORTED BY: JUDITH ANN OSSA, CSR 2310
OFFICIAL REPORTER

APPEARANCES:

FOR THE PLAINTIFFS:
WARTNICK, CHABER, HAROWITZ & TIGERMAN
BY: MADELYN J. CHABER, ESQ.
ROBERT BROWN, ESQ.
MARTHA A.H. BERMAN, ESQ.
101 CALIFORNIA STREET, SUITE 2200
SAN FRANCISCO, CALIFORNIA 94111-5802

FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:

SHOOK, HARDY & BACON LLP
BY: DAVID K. HARDY, ESQ.
GERALD V. BARRON, ESQ.
LUCY E. MASON, ESQ.
ONE MARKET, STEUART TOWER, NINTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-1310.

FOR THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY:
WOMBLE, CARLYLE, SANDRIDGE & RICE
BY: JEFFREY L. FURR, ESQ.
200 WEST SECOND STREET
WINSTON-SALEM, NORTH CAROLINA 27101

HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
BY: H. JOSEPH ESCHER III
THREE EMBARCADERO CENTER, 7TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-4065

FOR DEFENDANT METALCLAD INSULATION CORPORATION:

http://legacy.library.ucsf.edu/tid/zil07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

MISCIAGNA & COLOMBATTO
BY: GREGORY S. ROSSE, ESQ.
27 MAIDEN LANE, 4TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108

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TUESDAY, JANUARY 18, 2000 8:55 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN CHAMBERS, OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: WE ARE ON THE RECORD, OUTSIDE THE PRESENCE OF THE JURY, FOR A COUPLE OF PURPOSES.

ONE OF THEM IS WE GOT A NOTE OR A CALL FROM JUROR NO. 4, DANIEL DENINGER, WHO CALLED AND SAID, ACCORDING TO MY CLERK, "I'M SO SICK. I CAN'T MAKE IT." AND MY CLERK SAID THAT HE SOUNDED VERY SICK.

SO I TAKE IT, AFTER A DISCUSSION OFF THE RECORD, THAT THERE IS A STIPULATION THAT I SHOULD EXCUSE MR. DENINGER AND WE WILL FILL HIS SEAT BY LOT AMONGST THE ALTERNATES.

IS THAT SO STIPULATED?

MS. CHABER: SO STIPULATED.

MR. HARDY: SO STIPULATED, YOUR HONOR.

MR. FURR: SO STIPULATED, YOUR HONOR.

MR. ROSSE: SO STIPULATED, YOUR HONOR.

(DISCUSSION OFF THE RECORD)

THE COURT: WE ARE BACK ON THE RECORD, OUTSIDE THE PRESENCE OF THE JURY.

MR. BROWN, I THINK, WANTED TO PUT ON THE RECORD A REFERENCE TO A DISCUSSION WE HAD OFF THE RECORD LAST WEEK, A TELEPHONE CONFERENCE CALL WITH COUNSEL, ALL ON THE PHONE.

MR. BROWN: YOUR HONOR, WE ARRANGED A CONFERENCE CALL, AND THE PURPOSE, FROM OUR STANDPOINT, WAS TO COME OUT TO THE COURT AND PUT ON THE RECORD A STIPULATION WE HAD WITH JOE ESCHER AND RJR ON SOME USE OF DOCUMENTS IN THE OPENING

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STATEMENT.

THE COURT: WHAT DID YOU JUST SAY; TO PUT ON THE RECORD WHAT?

MR. BROWN: A STIPULATION WE HAD WITH JOE ESCHER.

AND SECONDLY, TO PRESENT AN ARGUMENT AS TO WHY PHILIP MORRIS' OBJECTIONS TO SOME OPENING STATEMENT DOCUMENTS WERE NOT WELL TAKEN.

AND YOUR HONOR DECLINED TO DO THAT BECAUSE, AS I UNDERSTOOD IN THE CONVERSATION -- I MIGHT SAY IT WAS MY FIRST UNDERSTANDING -- YOU HAD ORDERED THAT THERE WOULD BE A

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STATUS QUO ON DOCUMENTS THAT, FROM THE TIME WE WENT HOME ON FRIDAY, BECAUSE OF THE ILLNESS OF MADELYN CHABER, THERE WOULD BE NO CHANGE IN THE DOCUMENTS THAT WE OFFERED OR IN THE ARGUMENT CONCERNING THEM.

THE COURT: WERE YOU IN CHAMBERS WHEN THAT WAS DISCUSSED ON FRIDAY MORNING?

MR. BROWN: YES, I WAS MY. DAVID HARDY SAID THAT. I HEARD HIM. I DID NOT HAVE A PERCEPTION YOU ORDERED IT. I DID NOT.

AND AT THAT POINT, I DIDN'T HAVE ANY -- I HAD NO CONSCIOUS THOUGHT ABOUT THOSE DOCUMENTS FRANKLY AT ALL, BECAUSE I WAS MORE CONCERNED ABOUT MADELYN CHABER.

WHAT HAPPENED WAS THAT, ON FRIDAY, AFTER WE WERE HERE, WE HAD A MEET-AND-CONFER. I WENT OVER WITH MR. CREINER THEIR OBJECTIONS AND WAS KIND OF SURPRISED AT HOW POOR -- WHAT A LACK OF QUALITY THESE OBJECTIONS HAD.

AND IT SEEMED TO ME THAT BECAUSE THE OPPORTUNITY

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HAD PRESENTED ITSELF FOR YOU TO LOOK AT THEM, IT WOULD BE FAIR FOR YOU TO TAKE A LOOK AT WHAT WAS BEING SAID.

BEFORE WE GOT AHOLD OF YOU, JOE ESCHER AND MR. CREINER TALKED AND MR. CREINER -- I HOPE I'M SAYING THAT RIGHT.

MR. FURR: CREINER.

MR. BROWN: -- MR. CREINER CAME AND SAID THEY HAD A PROPOSAL REGARDING OUR USE OF ALL DOCUMENTS WITH THE TWO THAT THEY RESERVED THE RIGHT TO OBJECT TO.

THEN WE GOT ON THE PHONE AND YOU REACTED ADVERSELY TO OUR SUGGESTION THAT WE COME OUT.

AND I DO WANT TO SAY, YOUR HONOR, WE REALLY DO OBJECT TO THE IDEA THAT, WHEN THE TIME IS AVAILABLE, WE CAN'T LOOK AT ISSUES WHICH ARE AS IMPORTANT AS AN OPENING STATEMENT AND USE OF DOCUMENTS, ESPECIALLY DOCUMENTS WHICH ARE SO CLEARLY -- AT LEAST MOST OF THEM -- SO CLEARLY ADMISSIBLE DOCUMENTS.

YOU ADMITTED DOCUMENTS WHICH REALLY HAVE NO SOUND BASIS FOR OBJECTION. I UNDERSTAND YOU BELIEVE WE MADE AN AGREEMENT, AND I APPRECIATE THAT. IF WE DID, I'M SORRY. IT WENT BY ME.

MAYBE YOU ALSO BELIEVE YOU MADE AN ORDER. I DEFINITELY DIDN'T HEAR AN ORDER. THAT IS WHAT I WANTED TO SAY.

THE COURT: YOUR RECOLLECTION OF THE FACTS AND MINE DIFFER SHARPLY ON YOUR DESCRIPTION OF WHAT HAS OCCURRED, BUT LET ME GIVE THE DEFENSE LAWYERS A CHANCE TO SPEAK BEFORE I TELL YOU WHAT I THINK HAPPENED.

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MR. BROWN: OKAY.

MR. ESCHER: YOUR HONOR, THIS IS JOE ESCHER. IF I COULD QUICKLY DESCRIBE MY VERSION OF EVENTS. I GOT A TELEPHONE CALL FROM MR. CREINER. HE INDICATED THAT HE WAS MEETING WITH BOB BROWN AND THAT MR. BROWN WAS THREATENING TO GO OUT TO THE COURT TO HAVE A HEARING ON THE OBJECTIONS, AND

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THAT MR. BROWN HAD SET UP A HEARING IN THE COURT, EITHER BY TELEPHONE OR OTHERWISE, TO GET A DETERMINATION WITH RESPECT TO OBJECTIONS RELATING TO THE EXHIBITS DESIGNATED IN CONNECTION WITH THE OPENING STATEMENT.

AND I VERY MUCH DISAGREE WITH THE CHARACTERIZATION OF THE PURPOSE OF THIS HEARING BEING TO "PUT A STIPULATION ON THE RECORD."

IT'S VERY CLEAR TO ME THAT THE PRIMARY PURPOSE OF THE HEARING WAS TO GET A DETERMINATION FROM THE COURT WITH RESPECT TO THE SUBSTANTIVE MERITS OF CERTAIN OF THE OBJECTIONS.

I HAVE SOME DISAGREEMENTS WITH SOME OF THE OTHER CHARACTERIZATIONS OF THE EVENTS, BUT I DON'T REALLY HAVE FIRSTHAND KNOWLEDGE OF A LOT OF THOSE THINGS, NOR DO I THINK THEY'RE RELEVANT TO THE ISSUE BEFORE THE COURT.

MR. HARDY: DAVID HARDY FOR PHILIP MORRIS.

AT THE TIME AND IMMEDIATELY AFTER -- AT THE TIME WE WERE MEETING WITH THE COURT IN CHAMBERS ON FRIDAY AND IMMEDIATELY AFTER, IT HAD BEEN DETERMINED AND AGREED TO BY DEFENSE COUNSEL THAT BECAUSE OF THE ILLNESS OF MS. CHABER, THE OPENING STATEMENTS COULD BE DELAYED UNTIL TUESDAY.

I ASKED THE COURT FOR CLARIFICATION OF MY

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UNDERSTANDING OF WHAT I UNDERSTOOD TO BE A RULING THAT THERE WOULD BE NO ARGUMENTS AND RULINGS ON OBJECTIONS TO DOCUMENTS BY THE COURT UNTIL AFTER OPENING STATEMENTS.

I ASKED FOR CLARIFICATION THAT THAT RULING HELD AND THAT THERE WOULD BE NO CHANGE IN THE STATUS WITH RESPECT TO DOCUMENTS.

AND I BELIEVE THAT I HEARD THE COURT CLEARLY SO INDICATE TO COUNSEL, WHICH INCLUDED ALL PLAINTIFFS' COUNSEL AND DEFENSE COUNSEL ON THE TRIAL TEAM, I BELIEVE.

THEREAFTER, IN THE AFTERNOON, ON FRIDAY, MS. MASON CALLED ME AND ADVISED ME THAT MR. BROWN WANTED US TO GO TO COURT TO SEE JUDGE MUNTER AND TO ARGUE ADMISSIBILITY OF DOCUMENTS IN OPENING STATEMENTS.

I ADVISED MS. MASON THAT SHE SHOULD REFUSE TO GO, BECAUSE IT WAS MY UNDERSTANDING THAT THAT WAS A CLEAR ORDER FROM THE COURT.

SHE THEN CALLED ME BACK AND SAID THAT SHE HAD WORD THAT JUDGE MUNTER HAD ASKED THAT COUNSEL GET ON THE PHONE FOR A CONFERENCE CALL. AND AFTER THAT, EVERYTHING WAS REPORTED TO ME SECOND, THIRDHAND. I WAS NOT ON THE CONFERENCE CALL.

THE COURT: MY RECOLLECTION OF THE EVENTS IS THIS: THE PARTIES ARE GOING TO SEEK, AS I UNDERSTAND IT, TO OFFER INTO EVIDENCE 200 LARGE BINDERS FULL OF DOCUMENTS.

AND SO, DURING THE PRETRIAL CONFERENCE, THE

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QUESTION AROSE AS TO WHAT THE LAWYERS COULD REFER TO IN THEIR OPENING STATEMENTS. AND I ASKED COUNSEL TO MEET AND CONFER AND DISCUSS THAT SUBJECT.

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AND WHAT I SAID WAS THAT IF ANYBODY HAD A BONA FIDE OBJECTION TO THE OTHER SIDE REFERENCING A DOCUMENT IN THE OPENING STATEMENT, YOU COULD WAIT TO REFER TO THAT DOCUMENT UNTIL IT GOT INTO EVIDENCE, BUT THAT YOU COULD MEET AND CONFER AND DISCUSS THAT AND REACH AGREEMENT, IF YOU COULD.

AS LATE AS THURSDAY EVENING, WE HAD A FURTHER DISCUSSION ABOUT HOW MANY DOCUMENTS THAT PLAINTIFFS' COUNSEL WAS GOING TO DESIGNATE FOR R.J. REYNOLDS. I THINK IT WAS WORKED OUT --

MS. CHABER: FOR ALL.

THE COURT: FOR ALL. IT WAS WORKED OUT THAT YOU COULD REFER TO, I THINK IT WAS 50 DOCUMENTS, EVEN THOUGH YOU WERE ONLY GOING TO BE USING SOME OF THEM.

IN OTHER WORDS, AS OF THE END OF THURSDAY NIGHT, THINGS APPEARED TO BE COPACETIC, WITH NOBODY HAVING ANY OBJECTIONS, AT LEAST THAT HAD BEEN VOICED ON THE RECORD OR TO ME OFF THE RECORD WITH RESPECT TO HOW WE WERE GOING TO HANDLE THIS MATTER.

WE ARRIVED ON FRIDAY MORNING AND WE WERE HERE AT THE TIME BEFORE THE OPENING STATEMENTS. AND MS. CHABER DID NOT APPEAR TO BE TOO WELL TO THE COURT. AND MS. CHABER DIDN'T ASK FOR THE DAY OFF.

AT THE COURT'S SUGGESTION, I SAID OFF THE RECORD, "MS. CHABER, WOULD YOU LIKE TO HAVE THE DAY OFF, IF THERE'S NO OBJECTION TO IT," OR SOMETHING TO THAT EFFECT.

AND I TURNED TO THE DEFENSE COUNSEL AND I SAID "IS THERE ANY OBJECTION?"

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AND THEY ALL SAID NO, WITH MR. HARDY ADDING, "NO, AS LONG AS WE RETAIN THE STATUS QUO WITH RESPECT TO THE SUBJECT OF THE DOCUMENTS THAT ARE GOING TO BE REFERRED TO BY EVERYBODY IN THE OPENING STATEMENTS."

AND THAT WAS CLEARLY UNDERSTOOD BY EVERYBODY HERE.

AND I EVEN SAID, "THE CLOCK STOPS HERE." I REMEMBER USING THAT EXPRESSION.

AND I REMEMBER MS. CHABER RESPONDING, "THANK YOU SO MUCH FORGIVING US THE DAY OFF."

AND THEN I SAID THAT I WOULD BE AVAILABLE DURING THE DAY IF THE PARTIES WANTED TO MEET AND CONFER ON DOCUMENTS AND THEY HAD SOME ISSUES TO PRESENT TO ME WITH RESPECT TO THE ADMISSIBILITY OF DOCUMENTS, OBVIOUSLY UNDERSTANDING THAT THE DEAL THAT YOU HAD MADE WAS NOT GOING TO BE SUPERCEDED.

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THEN I GET A PHONE CALL -- NO, MY CLERK -- TELLING ME AT 3:30 THAT, I GUESS, HE'S TALKED TO MR. BROWN, AND MR. BROWN WANTS TO COME OUT HERE AND ARGUE ABOUT AN EXPANDED SCOPE FOR MS. CHABER TO REFER TO IN HER OPENING STATEMENTS, AND THAT COUNSEL FOR PHILIP MORRIS WAS REFUSING TO COME OUT HERE.

THAT WAS THE POINT AT WHICH I ORDERED OR ASKED FOR THE TELEPHONE CONFERENCE.

NOW, ON THE TELEPHONE CONFERENCE, THERE WAS NEVER, EVER ANY REFERENCE TO ANYBODY PUTTING ANY STIPULATION ON THE RECORD. THAT SUBJECT WAS NOT MENTIONED ON THE TELEPHONE CALL. THIS IS THE FIRST TIME I HEARD THAT.

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WHAT I SAID ON THE TELEPHONE CALL WAS THAT I UNDERSTOOD THAT YOU WANTED TO COME OUT HERE -- THE PLAINTIFFS' LAWYERS WANTED TO COME OUT HERE IN ORDER TO DISCUSS A BROADENED REFERENCE BY PLAINTIFFS' COUNSEL TO DOCUMENTS IN OPENING STATEMENTS.

AND I HAD SAID TO MR. BROWN THAT THAT WAS CONTRARY TO THE DEAL THAT HAD BEEN STRUCK IN CHAMBERS, AND I WAS HERE WHEN THAT DEAL WAS STRUCK.

AND I SAID THAT THE COURT HAD GIVEN SPECIAL DISPENSATION TO MS. CHABER TO HAVE THE DAY OFF, BUT IT WAS AGAINST THE BACKGROUND OF THE DEAL THAT HAD BEEN MADE.

AND MR. BROWN SAID TO ME, IN A TONE THAT I DIDN'T REALLY APPRECIATE, "YOU DIDN'T GIVE MS. CHABER SPECIAL DISPENSATION AT ALL. SHE WAS SICK." AS IF TO SAY, "YOU DIDN'T DO ANYTHING FOR US," AT THAT STAGE AT LEAST.

MR. BROWN: I DIDN'T SAY THAT.

THE COURT: IF YOU DIDN'T SAY IT, THAT'S FINE. I HEARD YOU SAY, "YOU DIDN'T GIVE MS. CHABER DISPENSATION," BUT IF I'M WRONG ABOUT THAT, I WOULD STAND CORRECTED.

MR. BROWN: COULD I CORRECT THAT?

THE COURT: YES, PLEASE.

MR. BROWN: IT CAME UP -- A COMMENT CAME UP IN THE CONTEXT THAT YOU EITHER EXPRESSLY SAID OR IMPLIED -- AND I'M NOT POSITIVE HOW STRONG YOUR STATEMENT WAS -- THAT WE WERE TRYING TO TAKE ADVANTAGE OF A SITUATION, WITH THE IMPLICATION THAT SHE WASN'T ILL, REALLY SICK. THAT IS THE WAY I READ IT.

AND WHAT I SAID WAS, "YOUR HONOR, I HAVE BEEN ON

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THE PHONE WITH MADELYN CHABER AT HOME, AND SHE IS VERY SICK. AND I CAN ASSURE YOU THERE'S NOTHING GOING ON HERE ABOUT HER BEING SICK." I DIDN'T SAY ANYTHING ABOUT DISPENSATION.

THE COURT: THIS CONFERENCE MAY REFLECT NOTHING MORE THAN A MISUNDERSTANDING, BUT I CERTAINLY NEVER SAID OR IMPLIED THAT MS. CHABER WAS NOT SICK.

IN FACT, I WAS THE ONE OF EVERYBODY IN THIS ROOM THAT SUGGESTED THE DAY OFF. MS. CHABER, NOT YOU OR ANYBODY

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ELSE. SO I WOULD HAVE NEVER, EVER SAID THAT, BECAUSE I DIDN'T THINK IT. AND IT WOULD HAVE BEEN TOTALLY INCONSISTENT WITH MY SUGGESTING THE DAY OFF.

BUT THEN WE WENT ON IN THE CONVERSATION, AND I SAID, "I'M NOT GOING TO HEAR ANY ISSUE TODAY ABOUT AN EXPANDED REFERENCE TO DOCUMENTS BECAUSE THAT WAS THE DEAL YOU HAD MADE."

AND YOU SAID TO ME, "YOU HAVE TIME TO HEAR THIS TODAY. YOU OUGHT TO HEAR IT." IN EFFECT, YOU SAID TO ME, "YOU HAVE TIME TODAY TO DO IT."

I DON'T LIKE COUNSEL TELLING ME WHEN I HAVE TIME TO DO THINGS AND WHEN I SHOULD DO THINGS. I HEARD YOU MAKE A DEAL THAT WAS A FIRM DEAL.

AND MS. CHABER, WHEN IT WAS OVER, THANKED THE COURT FOR GIVING HER THE DAY OFF.

NOW I'M GOING TO DROP THIS AND LET IT GO, BECAUSE I THINK THIS IS A LOT OF CONVERSATION TO NO END.

BUT IT CERTAINLY REFLECTS A MISUNDERSTANDING ABOUT WHAT OCCURRED IN THAT TELEPHONE CONVERSATION, BUT THE

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ONE THING ABOUT WHICH I HAVE NO DOUBT -- AND I'M WILLING TO GIVE YOU THE BENEFIT OF ANY DOUBT ON ANYTHING ELSE -- IS ON THAT DEAL THAT WAS MADE IN CHAMBERS.

MS. CHABER: I'D LIKE TO ADD JUST ONE THING.

THE COURT: SURE.

MS. CHABER: I UNDERSTOOD WHEN WE WERE IN CHAMBERS -- AND GRANTED, MY UNDERSTANDING COULD BE EVEN A LITTLE BIT FLAKY, GIVEN HOW I WAS FEELING AT THE TIME -- THAT THE COURT WAS TALKING ABOUT BONA FIDE OBJECTIONS TO DOCUMENTS AND NOT JUST STRATEGY BY THE DEFENDANTS TO OBJECT TO EVERY DOCUMENT THAT THEY DIDN'T LIKE, WHETHER OR NOT THEY KNEW IT WAS A DOCUMENT THAT WAS GOING TO COME INTO EVIDENCE, EITHER BECAUSE IT HAD COME INTO EVIDENCE IN HENLEY OVER THE SAME OBJECTIONS THAT WERE BEING MADE OR WHATEVER.

AND I INDICATED TO THE COURT THAT I HAD FIRST RECEIVED THE OBJECTIONS OF R.J. REYNOLDS FAXED TO ME FROM BATON ROUGE, LOUISIANA AT 3:37 IN THE MORNING. THAT WAS 3:37 IN THE MORNING OF MY BEING EXTREMELY ILL.

AND WHEN I LOOKED AT THEM, THERE VIRTUALLY WERE NO DOCUMENTS LEFT.

WHEN THAT GOT ADDED TO THE DOCUMENTS THAT PHILIP MORRIS HAD MORE TIMELY, ALBEIT 11:30, BUT GIVEN WHEN THEY GOT MY THING, MORE TIMELY HAD OBJECTED TO.

AND WHEN I LOOKED AT MANY OF THE DOCUMENTS, THEY WERE CLEARLY DOCUMENTS THAT IT SEEMED TO ME WERE NOT IN GOOD FAITH AND WERE NOT, AS THE COURT HAD SAID, BONA FIDE.

AND THAT WAS WHERE I THINK THE MISUNDERSTANDING TOOK PLACE, BECAUSE IN THE COURSE OF THAT, I THOUGHT THAT

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COUNSEL WERE ALL MEETING AND CONFERRING WHILE I WAS DYING.

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THE COURT: FOR THE RECORD, YOU'RE BEING
FACETIOUS.
MR. BROWN: ALMOST.
THE COURT: THE RECORD SHOULD SHOW LAUGHTER ON
MS. CHABER'S PART. SOMETIMES YOU READ THESE TRANSCRIPTS SIX
MONTHS LATER AND THEY DON'T APPEAR TO BE WHAT THEY WERE.
MS. CHABER: YES, THAT I FELT LIKE I WAS DYING.
HOW IS THAT? THE ONLY THING THAT I WOULD SAY IS THAT THERE
WERE BROADER CATEGORIES OF DOCUMENTS THAT WERE LOOKED AT
THAT COULD HAVE BEEN DEALT WITH AT THE TIME THAT WOULD HAVE
INCLUDED THESE.
AND THE ONLY THING I WOULD ADD TO THIS IS THAT
THE STATUS QUO WAS NOT BROKEN BY US OR ATTEMPTED TO BE
BROKEN BY US.
BUT SUBSEQUENTLY, AT THE END OF FRIDAY AFTERNOON,
WE GOT A PHONE CALL FROM THE DEFENDANTS THAT THEY WERE
OBJECTING TO THREE ADDITIONAL DOCUMENTS.
AND SO I THINK EITHER THE STATUS QUO EXISTS OR
THE STATUS QUO DOESN'T EXIST.
THE COURT: THE DEAL WAS THAT WHAT MAY BE THE
STATUS QUO EXISTED AS OF THE MORNING. NOBODY SPOKE OUT
AGAINST IT. THE DEFENDANTS ASKED FOR IT.
I STATED THAT THE CLOCK WILL STOP HERE.
EVERYBODY WAS COPACETIC WITH THAT SITUATION. AND THAT IS
THE WAY WE SHOULD LEAVE IT.
MS. CHABER: YOU KNOW, I'D LIKE TO POINT OUT
THAT I SHOWED COUNSEL ALL OF THE THINGS THAT I WAS GOING TO
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USE IN OPENING, AND DID NOT GET A RECIPROCAL VIEW OF
ANYTHING THAT THEY WERE USING IN OPENING. SO I DON'T KNOW
ABOUT THIS STATUS QUO IS THE STATUS QUO.
THE COURT: CAN I SUGGEST THAT -- WE HAVE A JURY
OUT THERE. WE WANT TO GET ON WITH THIS.
MR. HARDY: I WOULD JUST LIKE TO CORRECT A
COUPLE OF THINGS QUICKLY, YOUR HONOR.
MS. CHABER'S ARGUMENTS FIRST PLAINLY ASSUME THAT
WE CONCEDE OUR OBJECTIONS WERE NOT BONE FIDES, WHICH OF
COURSE WE DON'T.
SECONDLY, THE REFERENCE THAT SHE MADE TO US
VIOLATING THE COURT'S ORDER BY OBJECTING TO DOCUMENTS LATE
FRIDAY IS, I BELIEVE, A REFERENCE TO ME HAVING LUCY MASON
PUT IN WRITING THE OBJECTIONS I MADE PERSONALLY TO
MS. CHABER BEFORE THE HEARING FRIDAY MORNING IN HERE, SO
THAT THERE WOULD BE NO ARGUMENT ABOUT WHETHER I HAD MADE
THOSE OBJECTIONS.
THEY WERE NOT MADE FOR THE FIRST TIME LATE
FRIDAY. THEY WERE MADE FRIDAY MORNING, BEFORE WE EVER CAME
INTO CHAMBERS.
AND FINALLY, WE DID NOT OBJECT TO THE
DEMONSTRATIVE EXHIBITS THAT MS. CHABER SHOWED US, WITH THE
EXCEPTION OF AN OBJECTION TO A MARLBORO AD THAT SHE TOLD ME
IS FROM 1970.
AND I ASKED MS. MASON TO INDICATE IN THE

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LETTER, AND SHE DID, THAT IF PLAINTIFFS' COUNSEL COULD SHOW US THE RELEVANCE OF AN ADVERTISEMENT THAT WAS DURING THE PERIOD OF PREEMPTION, THAT WE'D RECONSIDER THE OBJECTION.

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AND FINALLY, IT IS OUR INTENTION TO SHOW -- AND I BELIEVE WE HAVE NO OBJECTION TO ANY OF THE OTHER DEMONSTRATIVES THAT MS. CHABER SHOWED US. AND FINALLY, IT IS OUR INTENTION TO SHOW OUR DEMONSTRATIVES TO MS. CHABER AFTER HER OPENING STATEMENT AND BEFORE OURS.

THE COURT: LET ME ASK YOU ALL A QUESTION.

WE HAVE TO, IN THIS CASE, MAKE CERTAIN CONCESSIONS TO THE SHORTNESS OF LIFE WHILE STILL FOLLOWING THE LAW.

WE HAVE GOT A JURY OUT THERE. IT'S 9:20. I THINK THE AIR HAS BEEN CLEARED ON WHAT OCCURRED LAST WEEK AND I THINK WE'RE PREPARED TO MOVE FORWARD.

ARE WE OKAY ON YOUR UNDERSTANDING OF WHAT YOU ARE DEALING WITH, SO THAT WE CAN IMPLEMENT THAT DEAL AND GET ON WITH THE OPENING STATEMENTS AT THIS POINT?

THAT WOULD BE THE COURT'S PREFERENCE, IF WE ARE ABLE TO DO THAT.

MR. ESCHER: LET'S DO IT.

MR. BROWN: WE HAVE THE QUESTION OF THOSE THREE LATE OBJECTIONS. I DON'T KNOW WHERE THE STATUS IS ON THOSE.

MS. CHABER: FRIDAY MORNING IS TWO SECONDS BEFORE MY OPENING.

THE COURT: I THINK MR. HARDY WAS SAYING THEY WERE REFLECTIVE OF SOMETHING THAT HE HAD SAID TO YOU EARLIER.

MS. CHABER: THAT MORNING? FRIDAY MORNING?

I MEAN, YOU KNOW, I SUPPOSE I COULD PREPARE WHATEVER I PREPARE AND WALK IN ON FRIDAY MORNING AND HAVE

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THEM SAY, "I OBJECT TO EVERYTHING, AND YOU CAN'T USE ANYTHING UNDER YOUR" --

THE COURT: CAN THE TWO OF YOU JUST MEET AND CONFER IN THE HALL AND WORK THESE OUT?

MS. CHABER: YES.

WHAT WAS THE SECOND JUROR NOTE, YOUR HONOR?

THE COURT: THE SECOND JUROR NOTE IS THAT MR. ROYALE HAS NOW ARRIVED. HE SHOWED UP AT 9:15.

I'M GOING TO HAVE TO HAVE A LITTLE TALK WITH HIM.

MS. CHABER: HE'S HERE NOW?

THE COURT: HE'S HERE NOW, BUT WE HAVE NOW HAD TWO COURT DAYS, BOTH OF WHICH HE HAS BEEN AT LEAST 15 MINUTES LATE. WE CAN'T KEEP HIM AS A JUROR IF HE'S GOING TO CONTINUE TO KEEP HIS OWN HOURS THIS WAY. FORTUNATELY --

MS. CHABER: WE HAVE BEEN BUSY.

THE COURT: -- OR UNFORTUNATELY, WE HAVE BEEN OCCUPYING THIS TIME OURSELVES. BUT I'M HOPING TO BRING THAT TO AN END, SO WE CAN BE FAITHFUL TO THE STARTING TIME AS FAR AS THE JURY IS CONCERNED AS WELL.

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MS. CHABER: DOES ANYONE --
THE COURT: I'M GOING TO TALK TO HIM ABOUT IT IN FRONT OF EVERYBODY.
MS. CHABER: AND DOES ANYONE KNOW IF THE INVESTIGATIVE ANALYST HAS SORT OF BEEN CALLED OFF?
THE COURT: UNLESS SOMEBODY WANTS TO ADDRESS THAT SUBJECT, I DON'T WANT TO TAKE THE TIME RIGHT NOW. I WANT TO GET ON WITH THE OPENING STATEMENTS.
OKAY. WE ARE OFF THE RECORD.

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(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY AT 9:25 A.M.)
THE COURT: GOOD MORNING, EVERYBODY. A COUPLE OF OTHER ORDERS OF BUSINESS BEFORE WE GET TO THE OPENING STATEMENTS.
WE HAVE ALREADY LOST ONE OF OUR JURORS DUE TO ILLNESS, AND I AM GOING TO EXCUSE THIS PERSON BECAUSE WE NEED TO GET GOING WITH THIS CASE. SO I'VE EXCUSED MR. DENINGER, JUROR NO. 4.
BUT LET ME ASK YOU ALL, PLEASE TAKE VERY GOOD CARE OF YOURSELVES. WE CANNOT AFFORD TO CONTINUE TO LOSE OUR ALTERNATES.
I'M GOING TO ASK TATSUO TO CALL AT RANDOM FROM OUR ALTERNATES TO SELECT THE PERSON WHO WILL TAKE SEAT NO. 4, AND THAT WILL BE YOUR SEAT.
THE CLERK: OKAY. DAVID EDWARD TURBERT.
THE COURT: OKAY, MR. TURBERT. WHY DON'T YOU TAKE THAT SEAT.
AND LET ME ASK, WOULD ONE OF THE TWO OF YOU, EITHER MR. ROYALE OR MS. SIU MENDOZA, LIKE TO HAVE THIS SEAT? WOULD YOU BOTH LIKE TO HAVE IT? IF YOU WANT IT, RAISE YOUR HAND.
(HAND RAISED)
THE COURT: MS. SIU MENDOZA, YOU ARE THE ONLY ONE WITH YOUR HAND UP. WHY DON'T YOU TAKE SEAT 15.
OKAY. I WANT TO TALK TO YOU, MR. ROYALE. IF WE ARE GOING TO RUN THIS TRIAL IN AN EFFICIENT MANNER, WE ARE

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GOING TO HAVE TO START AT THE TIME THAT I SAY THAT WE ARE STARTING. OTHERWISE, THERE'S GOING TO BE A LEVEL OF FRUSTRATION THAT IS GOING TO BE BUILDING UP AMONG THE JURORS AS BETWEEN THEMSELVES.
THIS IS THE SECOND DAY YOU'VE BEEN IN COURT. THIS IS THE SECOND DAY THAT YOU HAVE BEEN AT LEAST 15 MINUTES LATE. IS THERE A REASON FOR THIS, MR. ROYALE?
MR. ROYALE: TRAFFIC.
THE COURT: WELL, I'M GOING TO ASK YOU TO PLEASE BE HERE ON TIME FROM NOW ON. TRAFFIC IS NOT AN EXCUSE.
YOU ARE JUST GOING TO HAVE TO LEAVE HOME EARLY ENOUGH TO ACCOUNT FOR THE POSSIBILITY OF SOME HEAVY TRAFFIC. WE NEED TO HAVE YOU HERE ON TIME. IF EVERYBODY IN THIS ROOM HAS TO WAIT 15 MINUTES FOR YOU AND YOU MULTIPLY THAT 15 MINUTES TIMES THE NUMBER OF PEOPLE THAT HAVE TO WAIT, YOU ARE WASTING A LOT OF PEOPLE'S TIME.
NOW, I RECOGNIZE THAT YOU'RE PERFORMING AN IMPORTANT PUBLIC SERVICE HERE, THIS JURY SERVICE, SO I'M NOT

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INTERESTED IN CHASTISING YOU OR BLAMING YOU, AND I CERTAINLY DON'T WANT TO MAKE THIS AN EXPERIENCE FOR YOU THAT'S NOT A PLEASANT EXPERIENCE, BUT WE'RE GOING TO ABSOLUTELY HAVE TO HAVE YOUR COOPERATION IN TURN.

ARE YOU WILLING TO GIVE IT AND WILL YOU SEE THAT DOESN'T HAPPEN AGAIN, PLEASE?

MR. ROYALE: YES.

THE COURT: THANK YOU VERY MUCH. I APPRECIATE THAT.

I THINK WE ARE READY FOR OUR OPENING STATEMENTS.

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MS. CHABER, ARE YOU GOING FIRST?

MS. CHABER: YES, YOUR HONOR.

THE COURT: OKAY.

OPENING STATEMENT BY MS. CHABER

MS. CHABER: THIS IS A CASE ABOUT THE SELLING OF DEATH. THE EVIDENCE WILL SHOW THAT THE DEFENDANTS CONSPIRED TO SELL CANCER BY THE CARTON, FULL WELL KNOWING THAT MILLIONS OF PEOPLE WOULD BE INJURED AND KILLED BY THEIR PRODUCT.

THEY'VE KNOWN THAT SINCE AT LEAST THE 1950S. THEY'VE KNOWN IT AND THEY DID IT KNOWING THAT CHILDREN ARE THE PEOPLE WHO START SMOKING, NOT ADULTS.

THEY DID IT KNOWING THAT THEIR PRODUCT CREATED A DEPENDENCY IN THE USER. AND THEY DID IT KNOWING THAT THE RISKS OF SMOKING MULTIPLIED WITH ASBESTOS EXPOSURE TO CREATE AN EVEN MORE ENORMOUS RISK TO THE INDIVIDUAL EXPOSED TO BOTH.

THEY DID IT NOT TO PRODUCE A DRUG THAT BENEFITED MANKIND, BUT THEY DID IT FOR ONE REASON AND ONE REASON ONLY, AND THAT REASON WAS THE BOTTOM LINE, PROFITS. AND IN DOING SO, THEY DID IT WITH THE DISRESPECT OF THE PUBLIC HEALTH. AND IT HAS LED TO THE WORST EPIDEMIC EVER IN HISTORY.

THE CIGARETTE COMPANIES, R.J. REYNOLDS, PHILIP MORRIS AND THE OTHER COMPANIES, HAD A CHOICE. THEY HAD A CHOICE TO BE FRANK, TO BE FORTHRIGHT.

MR. HARDY: EXCUSE ME, MS. CHABER.

OBJECTION, YOUR HONOR. THIS IS ARGUMENTATIVE.

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THE COURT: SUSTAINED.

YOU NEED TO ELIMINATE THE ARGUMENT.

MS. CHABER: THE EVIDENCE WILL SHOW THAT FOR 50 YEARS, THEY HAVE FOUGHT WHAT THEY CALL THE HEALTH WAR. FOR 50 YEARS, THEY HAVE CLAIMED THAT THE CASE AGAINST THE CIGARETTE HASN'T BEEN PROVEN.

THE EVIDENCE WILL SHOW THAT, TO THIS DAY, DESPITE WHAT THE GOVERNMENT SAYS, DESPITE WHAT HEALTH OFFICIALS SAY, THEIR WITNESSES AND THEIR EXPERTS IN THIS COURTROOM WILL

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CONTINUE TO SAY THAT.

THEY'LL SAY, "IT'S JUST STATISTICS. THAT DOESN'T PROVE ANYTHING. IT CAN'T BE PROVEN. WE DON'T KNOW WHAT THE WORD 'CAUSE' MEANS. WE DON'T BELIEVE OUR PRODUCTS" --

MR. HARDY: YOUR HONOR, AGAIN, I THINK THIS IS ARGUMENTATIVE, TO BE CHARACTERIZING WHAT DEFENSE WITNESSES ARE GOING TO SAY.

THE COURT: IT HAS AN ARGUMENTATIVE QUALITY TO IT.

YOU ARE GOING TO NEED TO LIMIT YOURSELF TO THE STATEMENT OF WHAT YOU BELIEVE IN GOOD FAITH THE EVIDENCE IS GOING TO SHOW AND NOT TO DO IT IN AN ARGUMENTATIVE CONTEXT.

MS. CHABER: THE EVIDENCE WILL SHOW THAT THEY WILL CLAIM THAT THEIR PRODUCTS ARE NOT ADDICTIVE.

AND THE EVIDENCE WILL SHOW THAT THEY CLAIM THAT THE HEALTH OFFICIALS AND THE GOVERNMENT EXAGGERATE THE HARM.

FOR 50 YEARS, PHILIP MORRIS, R.J. REYNOLDS AND THE OTHER CIGARETTE COMPANIES HAVE CREATED A FALSE

CONTROVERSY ABOUT SMOKING WHERE NONE EXISTS.

THEY STUDIED CHILDREN AND THEY FOLLOWED THEIR SMOKING BEHAVIORS, KNOWING FULL WELL THAT CHILDREN CAN EASILY BE LED TO IGNORE THE IMPORTANCE OF THEIR HEALTH, THAT CHILDREN WILL TAKE UNREASONABLE RISKS, AND THEY KNOWINGLY EXPLOITED THOSE FACTS.

THEY KNOWINGLY EXPLOITED A PRODUCT IMAGE THAT ENCOURAGED KIDS TO START SMOKING IN ORDER TO REBEL, EXPERIMENT, TAKE RISKS, BE INDEPENDENT, BE ONE OF THE GROUP, BE COOL, BE ADULT.

THEY DID IT KNOWING THAT CIGARETTES ARE THE GATEWAY DRUG TO OTHER DRUG USE, ESPECIALLY MARIJUANA AND ALCOHOL AMONG TEENAGERS.

AND WHEN THE PRODUCTS BECAME THE SUBJECT OF A MEDICAL DEBATE OVER ITS ADDICTIVE PROPERTIES, THEY REFUSED TO ADMIT IT. THEY DENIED THE TRUTH, EVEN WHILE DISCUSSING AND RESEARCHING AMONGST THEMSELVES ON HOW TO CAPITALIZE ON THAT CHEMICAL DEPENDENCY CREATED BY NICOTINE.

AND THEY SPENT THEIR TIME SPLITTING SCIENTIFIC HAIRS OVER THE CORRECT DEFINITION OF ADDICTION.

MR. ESCHER: OBJECTION, YOUR HONOR. IT'S ARGUMENTATIVE AGAIN.

THE COURT: SUSTAINED.

MS. CHABER. MS. CHABER, I DON'T WANT TO CONTINUE TO INTERRUPT YOU OR TO HAVE COUNSEL CONTINUE TO INTERRUPT, BUT THIS IS ARGUMENTATIVE, AND YOU ARE GOING TO NEED TO ELIMINATE THE ARGUMENTATIVE.

MS. CHABER: THE EVIDENCE WILL SHOW THAT TO

ADMIT ADDICTION MEANS THAT THEIR DEFENSE OF FREE CHOICE FAILS.

AND YOU WILL SEE DOCUMENTS FROM INSIDE THESE COMPANIES SAYING JUST THAT.

NOW, THE TOBACCO, THE CIGARETTE, THESE THINGS (INDICATING), IS NOT A VERY SIMPLE PRODUCT. IT'S NOT TOBACCO LEAF ROLLED UP INTO PAPER, BUT IT'S A HIGHLY

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TECHNICAL --
MR. ESCHER: OBJECTION, YOUR HONOR. IT'S ARGUMENTATIVE AGAIN.
THE COURT: I DON'T THINK THIS IS.
OVERRULED ON THIS ONE.
MS. CHABER: IT'S A HIGHLY TECHNICAL, MANUFACTURED, ENGINEERED, DESIGNED, CHEMICAL PROPERTY WITH COMPLICATED FORMULAS, WITH ALL SORTS OF ADDITIVES, ADDITIVES THAT ENHANCE ITS ADDICTIVENESS, AND AT THE SAME TIME, THEY DENY THE ADDICTIVENESS.
IN ORDER TO KEEP THIS DEBATE, THIS SO-CALLED CONTROVERSY GOING, CAUSE, ADDICTION, WHETHER SECONDHAND SMOKE IS HAZARDOUS, THESE ARE ALL THINGS THAT THE TOBACCO INDUSTRY DENIES.
AND AT THE SAME TIME, ONE HALF A MILLION AMERICANS DIE EVERY YEAR FROM TOBACCO-RELATED DISEASE. THAT IS 10 TIMES THE NUMBER OF DEATHS FROM THE ENTIRE VIETNAM WAR. THE PUBLIC IS ONLY NOW BECOMING AWARE OF THE RATE AND THE EXTENT OF DISEASE THAT CIGARETTE SMOKING --
MR. ESCHER: OBJECTION, YOUR HONOR. ARGUMENTATIVE.
0590
AND ALSO IRRELEVANT.
THE COURT: ON "IRRELEVANT," LET ME SAY THIS TO THE JURY. I TOLD YOU BEFORE THAT WHAT ALL THE LAWYERS TELL YOU IN THEIR OPENING STATEMENTS IS NOT EVIDENCE. I TOLD YOU THAT THE EVIDENCE COMES FROM THE VARIOUS SOURCES THAT I DESCRIBED TO YOU.
I'M NOT RULING AT THIS STAGE ON WHETHER SOMETHING IS RELEVANT OR NOT. YOU MAY OR MAY NOT HEAR EVIDENCE OF WHAT THE VARIOUS COUNSEL ARE TELLING YOU AT VARIOUS TIMES.
BUT YOU KNOW THAT THE EVIDENCE COMES FROM THE WITNESS STAND, NOT FROM WHAT THE LAWYERS TELL YOU. WHAT THEY TELL YOU IS DESIGNED TO BE HELPFUL TO YOU IN EVALUATING THE EVIDENCE WHEN YOU HEAR IT OR SEE IT AND YOU KNOW WHAT THOSE SOURCES ARE.
SO I'M NOT GOING TO PASS ON THE RELEVANCE AT THIS STAGE.
MR. ESCHER: YOUR HONOR, IF WE COULD HAVE A VERY SHORT SIDEBAR.
THE COURT: SURE.
(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)
MS. CHABER: IN THE UNUSUAL FASHION, ALL THE EQUIPMENT WAS WORKING BEFORE I STARTED AND NOT NOW (REFERRING TO ELECTRONIC EQUIPMENT). EXCUSE ME, AND EXCUSE THEM FOR TRYING TO FIGURE THIS OUT.
EVERY DAY, 4,000 TEENAGERS AND SOME EVEN YOUNGER THAN TEENAGERS START SMOKING. THE DEFENDANTS NEED NEW TEEN SMOKERS, WHAT THEY CALL IN THEIR DOCUMENTS "STARTERS" OR

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"LEARNERS." AND THEY NEED THEM OR THEY PUT THEMSELVES OUT OF BUSINESS. THEY'VE STUDIED SMOKERS AS YOUNG AS 12 YEARS OLD.

AND IN 1969, THEY PROMISED THEY WOULD AVOID ADVERTISING DIRECTED TO YOUNG PEOPLE, SUCH AS ADS THAT REPRESENT THAT CIGARETTE SMOKING IS ESSENTIAL TO SOCIAL PROMINENCE, SUCCESS, SEXUAL ATTRACTION, OR TO DEPICT SMOKERS ENGAGED IN SPORTS OR ACTIVITIES REQUIRING STAMINA OR CONDITIONING BEYOND THAT IN NORMAL RECREATION.

THEY DID NOT AND HAVE NOT LIVED UP TO THAT COMMITMENT. THE RATE OF TEEN SMOKING IS GOING UP, NOT DOWN, DESPITE THE CIGARETTE INDUSTRY'S CLAIM THAT THEY DO NOT TARGET YOUTH.

ADULTS WHO NEVER SMOKED AS KIDS DON'T MAKE ADULT CHOICES TO START SMOKING AT AGE 30, AFTER THEY KNOW AND CAN UNDERSTAND AND CAN WEIGH THE RISKS, AFTER THEY CAN LEGALLY CONTRACT TO TAKE ON THE DANGERS OF SMOKING.

MR. FURR: YOUR HONOR, THAT IS ARGUMENT.

THE COURT: THIS IS ARGUMENT.

YOU ARE GOING TO HAVE TO CONFORM YOUR OPENING STATEMENT TO THE COURT'S RULING, MS. CHABER. YOU ARE GOING TO HAVE TO CUT OUT THE ARGUMENT, PLEASE.

MS. CHABER: THE EVIDENCE IS THAT 90 PERCENT OF SMOKERS BEGIN WHEN THEY ARE CHILDREN, AT AN AGE WHEN THEY DO NOT UNDERSTAND MORTALITY STATISTICS AND DEATH.

IF YOU HAVE NOT BECOME A REGULAR SMOKER BY AGE 20, IT IS HIGHLY UNLIKELY THAT YOU WILL EVER BECOME ONE. AND KNOWING THIS, PHILIP MORRIS AND R.J. REYNOLDS ENGINEERED

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A VERY COMPLEX PRODUCT DESIGNED TO CREATE DEPENDENCE, TO KEEP THOSE KIDS SMOKING INTO AND THROUGH ADULTHOOD.

AND ALL THAT TIME, THEY HAVE DENIED AND CREATED A FALSE DEBATE ABOUT THE HAZARDS OF SMOKING. PHILIP MORRIS AND R.J. REYNOLDS WILL DENY THAT CIGARETTES HAD ANYTHING TO DO WITH LESLIE WHITELEY'S LUNG CANCER, DESPITE THE FACT THAT SHE STARTED SMOKING WHEN SHE WAS 13.

THEY WILL DENY THAT CIGARETTES CAUSED OR CONTRIBUTED TO LESLIE WHITELEY'S LUNG CANCER, DESPITE THE FACT THAT SHE SMOKED THEIR CIGARETTES, MARLBORO, CAMEL, CAMEL LIGHTS, CAMEL LIGHTS 100S, FOR 25 YEARS.

THEY WILL DENY THAT CIGARETTES INCREASED HER RISKS SIGNIFICANTLY, DESPITE THE FACT THAT MORE THAN TWO MILLION PUFFS OF SMOKE FILLED WITH CANCER-CAUSING SUBSTANCES WENT INTO HER LUNGS.

AND LIKE THE FOOL THAT THEY HOPED SHE WOULD AND OTHER KIDS WOULD BE --

MR. FURR: OBJECTION, YOUR HONOR.

MR. HARDY: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED. MS. CHABER. MS. CHABER,

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YOU ARE GOING TO NEED -- I'M NOT GOING TO CONTINUE TO TELL YOU THIS. I'M GOING TO HAVE TO RELY ON YOU TO CONFORM YOUR CONDUCT TO MY RULINGS, MS. CHABER.
DO YOU UNDERSTAND THAT?
MS. CHABER: YES.
THE COURT: ARE YOU GOING TO DO IT?
MS. CHABER: I DIDN'T THINK THAT WAS ARGUMENTATIVE, BUT TO THE BEST, OF COURSE I WILL, YOUR
0593
HONOR.
THE COURT: OKAY.
MS. CHABER: SHE BELIEVED THE TOBACCO COMPANIES. SHE KNOWS NOW THAT SHE UNWISELY BELIEVED THAT THEY WERE TELLING THE TRUTH. SHE BELIEVED THAT THE GOVERNMENT WAS JUST TRYING TO INTERFERE IN THEIR BUSINESS BY MAKING THEM PUT SURGEON GENERAL WARNINGS ON THE PACKAGING AND ADVERTISING. IF CIGARETTES WERE REALLY SO BAD, SHE THOUGHT, THEY'D NEVER BE LEGAL.
REGRETTABLY, SHE RELIED ON THE MANUFACTURER OF THE PRODUCT, THE EXPERTS, ABOUT THEIR OWN PRODUCT, THAT THE CIGARETTE COMPANIES WOULD HAVE THE FACTS AND WOULD TELL THE WHOLE TRUTH INSTEAD OF ISSUING PRESS RELEASES AND FLOODING THE AIRWAYS, NEWSPAPERS AND OTHER MEANS WITH CONTRARY AND CONTRADICTORY INFORMATION AND MISINFORMATION.
THEIR STATEMENTS WERE DESIGNED TO KEEP THE SMOKER SMOKING. AND IN THIS GOAL, THE CIGARETTE COMPANIES WERE UNITED AND THEY CONSPIRED TO KEEP THIS CONTROVERSY GOING IN ORDER TO KEEP SALES UP, IN ORDER TO SAVE THE INDUSTRY.
AMONGST THEMSELVES, THEY OF COURSE COMPETED FOR THE BIGGEST PIECE OF THE PIE, AND BEHIND EACH OTHER'S BACK, THEY REVERSE-ENGINEERED EACH OTHER'S CIGARETTES TO SEE WHY MARLBORO WAS THE LEADING BRAND (INDICATING), TO SEE WHAT PHILIP MORRIS WAS DOING THAT WAS MAKING PEOPLE BUY MARLBORO MORE THAN ANY OTHER CIGARETTE IN THE COUNTRY. WHY CHILDREN -- WHY IT WAS THE NO. 1 BRAND OF CIGARETTES FOR TEENAGERS.
AND SO R.J. REYNOLDS DID JUST THAT. THEY TOOK A
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LOOK AT IT. AND THEY DETERMINED THAT THERE WERE CERTAIN CHEMICALS, THERE WERE CERTAIN ADDITIVES, THERE WERE CERTAIN WAYS OF PRODUCING IT THAT WOULD MAKE THE NICOTINE THAT WAS IN THE CIGARETTE GO INTO A GAS PHASE FASTER AND GO TO THE BRAIN MUCH QUICKER, AND SATISFY MUCH QUICKER.
IN A LITTLE WHILE, YOU'LL HEAR FROM MR. ROBERT BROWN ABOUT WHAT LESLIE DID AND DIDN'T KNOW AND WHAT SHE BELIEVED AND RELIED ON. AND ALSO, HOW ASBESTOS -- NOT TO FORGET MR. ROSSE -- AND HOW ASBESTOS CONTRIBUTED TO HER RISK OF DEVELOPING LUNG CANCER AND THE ROLE THAT METALCLAD PLAYED IN THIS.
BUT RIGHT NOW, I'D LIKE TO INTRODUCE YOU TO LESLIE WHITE. YOU DON'T HAVE TO STAND.

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LESLIE WHITELEY. SITTING NEXT TO HER IS HER DAUGHTER, ELIZABETH, TREVOR, TROY AND HER HUSBAND LEONARD. THERE'S ONE MORE, CARL, BUT HE'S THREE YEARS OLD AND SO NOBODY THOUGHT HE WOULD BE ABLE TO SIT STILL LONG ENOUGH TO LISTEN.

NOW, LET ME GO BACK IN TIME A BIT TO WHERE THE CIGARETTE COMPANIES TOOK THE PATH THAT THEY TOOK, CHOSE THE ROUTE THAT THEY CHOSE TO MISREPRESENT, TO CREATE A FALSE CONTROVERSY IN THE 1930S AND 1940S.

WHEN IT BECAME APPARENT TO THE HEALTH OFFICIALS THAT THE NEW 20TH CENTURY HABIT OF CIGARETTE SMOKING HAD CREATED A 20TH CENTURY DISEASE OF LUNG CANCER, THE EXECUTIVES WENT DOWN THE PATH OF DENYING RATHER THAN ADMITTING. THEY SPENT BILLIONS OF DOLLARS ENHANCING AND CAREFULLY CONTROLLING NICOTINE.

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FOR EXAMPLE, THEY CHEMICALLY REMOVED ALL OF THE NICOTINE DURING THE PROCESSING OF THE TOBACCO AND THEN PUT IT BACK IN IN MEASURED AMOUNTS DESIGNED TO MAINTAIN WHAT THEY HAD DETERMINED WERE THE LEVELS NECESSARY TO INDUCE AND SUSTAIN ADDICTION, OR DEPENDENCY. LET'S USE THE WORD "DEPENDENCY."

AND ALONG THE WAY, THEY ADDED OTHER CALCULATED INGREDIENTS, LIKE AMMONIA AND SUGAR COMPOUNDS, THAT THEY LEARNED WOULD DO THINGS TO NICOTINE, WOULD BIND WITH IT, WOULD EFFECTIVELY SPEED IT THROUGH THE CIGARETTE TO THE LUNGS, AND FROM THE LUNGS TO THE BRAIN.

NICOTINE IS A DRUG. IT CHANGES THE BODY. IT ALTERS THE BODY'S CHEMISTRY, THE NEURORECEPTORS IN YOUR BRAIN, SO THAT THE DEPENDENT SMOKER NEEDS REGULAR INFUSIONS OF THE DRUG NICOTINE IN ORDER NOT TO GET HIGH, NOT TO HALLUCINATE, BUT IN ORDER TO FEEL NORMAL.

ONCE THERE IS A DEPENDENCY, ONCE THE NEURORECEPTORS HAVE CHANGED, THE ABSENCE OF THE DRUG LEAVES THE PERSON NOT FEELING NORMAL. AND WHEN THEY SMOKE ANOTHER CIGARETTE AND BRING MORE NICOTINE INTO THEIR BODY, THINGS NORMALIZE. THEY CAN FUNCTION NORMALLY. AND THIS HAD THE EFFECT OF MAXIMIZING THE DRUGLIKE EFFECT OF NICOTINE SMOKE.

NOW, WHAT I'D LIKE TO SHOW YOU, HOPEFULLY -- IF WE CAN TURN OUT SOME OF THOSE BACK LIGHTS, PLEASE -- THESE ARE SOME OF THE CHEMICALS IN CIGARETTE SMOKE (INDICATING).

AND THAT FIRST LIST IS A LIST OF SOME OF THE CARCINOGENS, THE CANCER-CAUSING SUBSTANCES.

THE SECOND IS THE COMPOUNDS IN CIGARETTES, LIKE

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NICOTINE, LIKE ALKALOIDS, LIKE HYDROCARBONS, PHENOLS, TOBACCO-SPECIFIC NITROSAMINES, A VERY STRONG CARCINOGEN.

THERE'S ALL SORTS OF OTHER THINGS IN CIGARETTE SMOKE, ARSENIC, NICKEL, CROMIUM, CADMIUM, LEAD, POLONIUM-210, BENZENE, DDT, DDE.

THOSE THINGS GET THERE BECAUSE INSECTICIDES ARE SPRAYED ON THE TOBACCO, INSECTICIDES TO KEEP THE BUGS FROM EATING UP THE TOBACCO LEAF.

NOW, WHAT COULD THEY HAVE DONE TO MAKE A SAFER CIGARETTE? PLENTY. AND WE ARE GOING TO LOOK AT SOME OF THE

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THINGS OF WHAT THEY DID AND THEY DIDN'T DO. AND WE'LL GO THROUGH THAT IN A FEW MINUTES.

BECAUSE RIGHT NOW, WHAT I WANT TO DO IS TAKE YOU A LITTLE BIT THROUGH THE HISTORY OF TOBACCO.

ABOUT 500 YEARS AGO, 1492 FOR THOSE OF YOU WHO DON'T REMEMBER, COLUMBUS SAILED THE SEAS OF BLUE, WHATEVER IT WAS WE LEARNED IN SCHOOL. COLUMBUS DISCOVERED THAT THE NATIVE POPULATION WAS SMOKING SOMETHING. THEY WERE SMOKING TOBACCO. THEY WERE SMOKING TOBACCO IN PIPES FOR RELIGIOUS AND CEREMONIAL PURPOSES.

THEY WERE NOT SMOKING CIGARETTES. THEY WERE NOT SMOKING CIGARS. THEY WERE SMOKING PIPES.

AND COLUMBUS, BRINGING BACK A LOT OF THINGS FROM THE NEW WORLD, BROUGHT BACK SOME TOBACCO.

AND THERE WAS SOME OUTCRY. WHEN YOU BURN IT, IT'S NOXIOUS, IT'S NOXIOUS. IT'S SMELLY. IT'S FOUL-SMELLING. KING JAMES, IN THE 1600S, WROTE A WHOLE TREATISE ON HOW HORRIBLE TOBACCO WAS.

0597

BUT IT WASN'T UNTIL THE 1880S, WHEN THE CIGARETTE ROLLING MACHINE, THE MACHINERY, THE INDUSTRIAL AGE CAME INTO EXISTENCE AND CIGARETTES COULD BE MANUFACTURED.

AND IF YOU LOOK AT WHAT WE HAVE HERE IS FROM THE 1880S UNTIL THE 1990S, THE USE OF TOBACCO IN THIS COUNTRY WAS LARGELY IN THE FORM OF SNUFF, THE TOP LINE (INDICATING), CHEWING TOBACCO, PIPES OR ROLL-YOUR-OWN, CIGARS. AND DOWN HERE, THIS RED BEING, THE CIGARETTE (INDICATING).

AND AS YOU CAN SEE, AS THE TIME PROGRESSED INTO THE 1920S, HELPED ALONG BY WORLD WAR I, CIGARETTES BECAME MORE POPULAR, AND MORE POPULAR STILL IN THE 1940S AND WORLD WAR II, WHEN SENDING A CARTON OF CIGARETTES TO THE PEOPLE FIGHTING FOR THE COUNTRY WAS THE PATRIOTIC THING TO DO, WHEN CIGARETTES WERE IN C-RATIONS, WHEN EVERYONE, AT LEAST EVERY ONE OF THE MALE PERSUASION, WERE SMOKING, WHEN IT WAS A MUCH MORE COMMON THING.

AND JUST ABOUT THAT TIME -- IT HAPPENED A LITTLE BIT BEFORE -- THERE WERE SOME PEOPLE WHO THOUGHT THAT THE WHOLE FLAPPER ERA, THAT SMOKING CIGARETTES FOR WOMEN WAS GLAMOROUS, AND ALSO MEANT THAT THEY COULD DO WHAT MEN DID.

MR. ESCHER: YOUR HONOR, OBJECTION. I DON'T BELIEVE THIS RELATES TO ANY TESTIMONY IN THIS CASE.

THE COURT: I DON'T KNOW WHETHER IT DOES OR IT DOESN'T, SO I CAN'T RULE ON IT.

THE JURY KNOWS WHAT EVIDENCE IS. THEY KNOW WHAT OPENING STATEMENTS ARE.

I DON'T KNOW WHETHER THERE WILL BE EVIDENCE LIKE THIS OR NOT, SO I'M GOING TO LET MS. CHABER CONTINUE.

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MS. CHABER: AND IN THE 1940S, WHEN WOMEN STARTED GOING AND WORKING IN THE FACTORIES, THEY BEGAN SMOKING TOO. IT WAS GENERALLY AN OLDER POPULATION OF WOMEN, BECAUSE THEY WERE THE WOMEN THAT WERE GOING OUT AND WORKING.

AND THIS INCREASED DRAMATICALLY. AND AS YOU CAN SEE (INDICATING), THE VERY PEAK, THE VERY TOP OF TOBACCO CONSUMPTION -- CIGARETTE CONSUMPTION, NOT JUST TOBACCO -- CIGARETTE CONSUMPTION IS IN THAT TIME PERIOD, 1958, '59, '60.

1959 IS WHEN LESLIE WHITELEY WAS BORN. AND YOU CAN SEE THAT IT STAYED PRETTY HIGH UNTIL WE GET TO THE 1980S, WHEN THE DECLINE BEGINS. AND THE SLOPE GOES DOWN AT A MUCH GREATER RATE. AND YET, STILL, CONSUMPTION -- THIS GOES UP TO 1995 -- IS STILL FAIRLY HIGH.

WITH THE INCREASE OF TOBACCO CONSUMPTION CAME THE INCREASE OF LUNG CANCER. AT THE TURN OF THE CENTURY, LUNG CANCER WAS VIRTUALLY AN UNKNOWN DISEASE.

BY THE 1930S AND '40S, DOCTORS WORKING IN HOSPITALS, OPERATING ON PATIENTS, DOING AUTOPSIES, TAKING PATHOLOGIES, WERE SEEING LUNG CANCER, LUNG CANCER, LUNG CANCER. AND LO AND BEHOLD, THEY STARTED CONCLUDING THAT ALL OF THOSE PEOPLE WHO WERE GETTING THE LUNG CANCER WERE CIGARETTE SMOKERS.

AND BY 1950, WHEN THEY LOOKED AT NONSMOKERS AND THEY LOOKED AT SMOKERS, THE RATES OF LUNG CANCER WERE ASTRONOMICAL, AND THE RATE OF LUNG CANCER IN THE NONSMOKER WAS MINUSCULE.

AND THOSE DOCTORS STARTED PUBLISHING. AND THEY

STARTED PUBLISHING THIS INFORMATION FOR OTHER PEOPLE.

AND THEY SAID, "CIGARETTE SMOKING, THIS IS WHAT WE SUSPECT IS THE CAUSE OF THIS."

MORE STUDIES WERE DONE. STUDIES WERE DONE ON MICE SKIN, PUTTING TARS THAT HAD CONDENSATED FROM CIGARETTES, THAT HAD BEEN GRABBED, TAKEN FROM CIGARETTES AND PUT ON MICE SKIN, AND CANCER WAS FORMING.

AND THEY PUBLISHED. AND WITH THESE PUBLICATIONS, THERE STARTED TO BE A BIT OF AN OUTCRY AMONGST THE PUBLIC AND STARTED TO BE WHAT IS CALLED THE FIRST CANCER SCARE. CIGARETTE SMOKING CAUSES CANCER.

AND INSTEAD OF AGREEING, THE TOBACCO COMPANIES GOT TOGETHER, ALL OF THEM, AT THE PLAZA HOTEL, AND HAD A SERIES OF MEETINGS IN 1953. AND IN THIS SERIES OF MEETINGS, THEY DETERMINED THAT THEY WOULD HIRE A PUBLIC RELATIONS COMPANY TO HELP COUNTER THE INFORMATION THAT WAS BEING PUT OUT TO KEEP THE PUBLIC FROM PANICKING.

MR. ESCHER: OBJECTION, YOUR HONOR. THAT'S ARGUMENT AGAIN.

THE COURT: I DON'T KNOW WHETHER SHE IS SAYING THAT THE EVIDENCE IS GOING TO SHOW THAT THAT WAS THEIR STATED PURPOSE OR WHETHER SHE IS CHARACTERIZING IT HERSELF.

SO WHICH IS IT?

MS. CHABER: STATED PURPOSE.

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THE COURT: ALL RIGHT. THEN I'M GOING TO ALLOW IT. IF YOUR REPRESENTATION IS THAT YOU ARE GOING HAVE TO EVIDENCE TO THAT EFFECT, I WILL ALLOW IT?

MS. CHABER: AND SOMEWHERE I HAVE A BLOWUP OF

0600

THE FRANK STATEMENT. I'M GOING TO PUT THIS UP HERE, AND YOU ARE GOING TO FIND THAT IT IS NOT YOUR EYES, BUT IT IS ILLEGIBLE.

AND HOPEFULLY, IN THE BLOWUP, WE'LL BE ABLE TO SEE SOME OF THESE WORDS BETTER.

THIS IS THE RESULT OF THESE MEETINGS OF ALL OF THE EXECUTIVES. YOU CAN SEE FROM THIS VERSION OF IT THAT IT IS SIGNED BY ALL OF THE COMPANIES, INCLUDING PHILIP MORRIS, INCLUDING R.J. REYNOLDS (INDICATING).

AND THEY ALL AGREED THAT THEY WOULD ISSUE THIS. THIS WENT INTO NEWSPAPERS IN EVERY CITY ACROSS THE COUNTRY.

AND WHAT THEY SAID IN THIS IS THAT "RECENT

> REPORTS ON EXPERIMENTS WITH MICE HAVE GIVEN WIDE PUBLICITY TO A THEORY THAT CIGARETTE SMOKING IS IN SOME WAY LINKED WITH LUNG CANCER IN HUMAN BEINGS. THESE EXPERIMENTS ARE NOT REGARDED AS CONCLUSIVE. WE DO NOT BELIEVE THAT ANY SERIOUS MEDICAL RESEARCH, EVEN THOUGH ITS RESULTS ARE INCONCLUSIVE, SHOULD BE DISREGARDED. AT THE SAME TIME, WE FEEL IT IS IN THE PUBLIC INTEREST TO CALL ATTENTION TO THE FACT THAT EMINENT DOCTORS AND RESEARCH SCIENTISTS HAVE PUBLICLY QUESTIONED THE SIGNIFICANCE. DISTINGUISHED AUTHORITIES POINT OUT, ONE, MEDICAL RESEARCH OF RECENT YEARS INDICATES MANY POSSIBLE CAUSES OF LUNG CANCER. THERE IS NO AGREEMENT AMONG THE AUTHORITIES

0601

> REGARDING WHAT THE CAUSE IS, THAT THERE IS NO PROOF THAT CIGARETTE SMOKING IS ONE OF THE CAUSES, THAT STATISTICS PURPORTING TO LINK CIGARETTE SMOKING WITH THE DISEASE COULD APPLY WITH EQUAL FORCE TO ANY ONE OF MANY THINGS. INDEED, THE VALIDITY OF THE STATISTICS THEMSELVES IS QUESTIONED BY NUMEROUS SCIENTISTS. WE ACCEPT AN INTEREST IN PEOPLE'S HEALTH AS A BASIC RESPONSIBILITY PARAMOUNT TO EVERY OTHER CONSIDERATION IN OUR BUSINESS. WE BELIEVE THE PRODUCTS WE MAKE ARE NOT INJURIOUS TO HEALTH. WE ALWAYS HAVE AND ALWAYS WILL COOPERATE CLOSELY WITH THOSE WHOSE TASK IT IS TO SAFEGUARD THE PUBLIC HEALTH."

AND YOU WILL HEAR FROM PEOPLE WHO WORKED IN PUBLIC HEALTH, FROM PEOPLE WHO HELPED EDIT AND WRITE SURGEON GENERAL'S REPORTS ON SMOKING, THAT THE CLOSE COOPERATION THAT WAS PROMISED WAS NOT FULFILLED.

THEN THEY PLEDGE THAT THEY WILL "AID AND ADVISE IN THE RESEARCH AREAS INTO TOBACCO USE AND HEALTH." AND THEY PROMISE MONEY, MONEY FOR RESEARCH. AND THAT THEY'LL DO

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RESEARCH. AND THEY SPENT LOTS OF MONEY DOING RESEARCH.

THE RESEARCH THAT THEY SPENT LOTS OF MONEY DOING WAS NOT RESEARCH DESIGNED TO PROVE THAT CIGARETTE SMOKING WAS NOT A CAUSE OF CANCER.

AND THEY ESTABLISHED A JOINT COMMITTEE CALLED THE TOBACCO INDUSTRY RESEARCH COMMITTEE. YOU'LL HEAR THE

0602

INITIALS T-I-R-C OR TIRC. THAT'S THE TOBACCO INDUSTRY RESEARCH COMMITTEE. AND IN CHARGE WILL BE A SCIENTIST OF IMPECCABLE INTEGRITY AND NATIONAL REPUTE.

AT THE TIME THAT THEY WROTE THIS, THEY HAD NO SCIENTIST. THEY HAD NO SCIENTIST IN MIND. AND IT TOOK THEM SIX MONTHS.

AND THE EVIDENCE WILL SHOW THAT THERE WAS A LITMUS TEST FOR THE SCIENTIST THAT THEY HIRED; THAT SCIENTIST HAD TO ALREADY ACCEPT THAT CIGARETTE SMOKING WAS NOT ONE OF THE CAUSES.

AND AN ADVISORY BOARD OF DISTINGUISHED MEN FROM MEDICINE AND SCIENCE, AND WE WILL ASK THEM TO SERVE ON THESE COMMITTEES.

AND YOU CAN SEE HERE, PHILIP MORRIS, SIGNED BY O. PARKER MCCOMAS, PRESIDENT, AND R.J. REYNOLDS BY E. A. DURR, PRESIDENT.

AND THIS ORGANIZATION, TIRC, SPOKE FOR THE TOBACCO COMPANIES.

LATER ON, YOU WILL HEAR THAT THEY DIVIDED UP THE PUBLIC RELATIONS PART INTO A GROUP CALLED THE TOBACCO INSTITUTE, TI, AND THE COUNCIL FOR TOBACCO RESEARCH, WHICH WAS SUPPOSED TO BE THE SCIENTIFIC GROUP.

AND YOU WILL HEAR THAT, THROUGHOUT THE YEARS, TIRC AND THE TOBACCO INSTITUTE HAVE HAD THE SAME PARTY LINE: "IT HASN'T BEEN PROVEN. DON'T KNOW WHAT THE CAUSES OF CANCER ARE OR HOW CANCER IS CAUSED. MAYBE IT'S A RISK FACTOR, BUT THERE'S SO MANY RISK FACTORS. THERE'S SO MANY OTHER THINGS IT COULD BE."

0603

CAUSES OF DEATH, 1990 (INDICATING), 67 PERCENT FROM TOBACCO, 471,690 TOBACCO-ATTRIBUTED DEATHS.

THE INDUSTRY DENIES THAT, DENIES THOSE NUMBERS. PREVENTABLE CAUSES OF CANCER MORTALITY (INDICATING). ALCOHOL, DIET.

NOW, REMEMBER, THIS INCLUDES ALL TYPES OF CANCER, THOUGH. THIS INCLUDES STOMACH CANCER, CANCERS OF THE GI TRACT, FOOD ADDITIVES, 1 PERCENT, SEXUAL ACTIVITY, 7 PERCENT; POLLUTION, 2 PERCENT; OCCUPATION, 4 PERCENT.

AND WITHIN THAT OCCUPATIONAL CATEGORY WOULD BE ASBESTOS, INDUSTRIAL PRODUCTS, 1 PERCENT. YOU COULD COMBINE THOSE TWO. AND ASBESTOS IS IN THERE.

GEOPHYSICAL FACTORS. I HAVE NO IDEA WHAT THAT MEANS.

INFECTION. HERE IS, "WE DON'T KNOW. WE CAN'T ATTRIBUTE SOMETHING TO," ABOUT 3 PERCENT.

MEDICAL CARE, UNFORTUNATELY, SOMETIMES THINGS DON'T ALWAYS GO THE WAY THEY SHOULD, 1 PERCENT.

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AND LET'S LOOK AT TOBACCO. 30 PERCENT. WE'RE JUST TALKING CANCERS.

THE OTHER CHART INCLUDED HEART DISEASE, EMPHYSEMA AND OTHER KINDS OF SMOKING DISEASES.

NOW, IF WE GET TO LUNG CANCER AND THE CAUSES OF LUNG CANCER, WE'VE GOT CIGARETTE SMOKING AT THE 85 TO 90 PERCENT OF ALL LUNG CANCERS ARE CAUSED BY CIGARETTE SMOKING (INDICATING).

RADON EXPOSURE. AH, THAT'S THE GEOPHYSICAL. I JUST REALIZED WHAT THAT WAS.

0604

ASBESTOS, 1 TO 7 PERCENT; ENVIRONMENTAL TOBACCO SMOKE, 2 PERCENT. AND OTHER THINGS, ALL ADDED INTO ONE CATEGORY, COKE OVENS, NICKEL, ROOFING TARS, ALL OF THOSE OTHER KINDS OF THINGS.

THIS IS FROM A 1958 STUDY (INDICATING) DONE BY HORN AND HAMMAR. AND YOU'LL SEE THAT NOT ONLY DOES CIGARETTE SMOKING CAUSE LUNG CANCER, BUT THE MORE YOU SMOKE, THE GREATER YOUR RISK.

SO WHENEVER A SMOKER HAS A LITTLE BIT OF A RISK HERE, LESS THAN HALF A PACK, HALF A PACK TO A PACK, ONE TO TWO, TWO PACKS, AND YOU'D BE OFF THE CHARTS FOR EVERYTHING ELSE.

ONE OF THE THINGS THAT YOU WILL LEARN IS THAT THIS PROGRESSION OF THE MORE YOU'RE EXPOSED TO A CARCINOGENIC SUBSTANCE AND THE MORE DISEASE YOU SEE AS A RESULT OF IT IS WHAT'S CALLED DOSE RESPONSE. AND IT HELPS DOCTORS UNDERSTAND CAUSE. BECAUSE YOU WOULD EXPECT THAT IF THE MORE YOU'RE EXPOSED TO IT, THE MORE DISEASE YOU WOULD GET, AND THERE IT IS (INDICATING).

NOW, LET ME SHOW YOU FROM THE SURGEON GENERAL'S REPORT, 1989 (INDICATING), "REDUCING THE HEALTH CONSEQUENCES OF SMOKING, 25 YEARS OF PROGRESS."

AND LOOK AT THE RATES FOR U.S. WOMEN. THIS REPRESENTS THE NONSMOKER (INDICATING). THIS BAR REPRESENTS THE SMOKERS. AND LOOK HOW IT'S GOING UP.

AS TIME GOES ON, AS TIME GOES ON, AS TIME GOES ON, MORE AND MORE WOMEN SMOKED. AND IN FACT, EVEN AS THE RATES OF MALE SMOKING WENT DOWN, WOMEN SMOKING WENT UP. AND

0605

TEEN SMOKING CONTINUES TO RISE.

AND THIS IS WHAT HAPPENS IF YOU BOTH SMOKE AND ARE EXPOSED TO ASBESTOS (INDICATING). HERE IS THE NONSMOKER, NOT EXPOSED TO ASBESTOS. HERE IS THE PERSON THAT SMOKES A PACK A DAY. HERE IS THE PERSON WHO SMOKES TWO PACKS A DAY. AND AS WE KNOW, THOSE NUMBERS WOULD GO UP WITH MORE SMOKING.

HERE IS THE NONSMOKER WORKING AS AN ASBESTOS INSULATOR, WORKING WITH ASBESTOS (INDICATING). HERE IS THE SMOKER WORKING WITH ASBESTOS.

AND THAT'S BECAUSE -- AND THAT'S A ONE PACK A DAY SMOKER. AND YOU CAN SEE THAT JUST THE SMOKING OR JUST THE

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ASBESTOS (INDICATING), ADDED TOGETHER, WOULDN'T GET YOU HERE.

THIS IS WHAT'S CALLED SYNERGY (INDICATING). AND IT'S A MULTIPLICATIVE RISK. IT'S MULTIPLYING. YOU MULTIPLY ONE EFFECT OF THE CARCINOGEN OF ASBESTOS WITH ALL OF THE CARCINOGENS THAT YOU GET FROM TOBACCO SMOKE AND YOUR RISK IS SO MUCH HIGHER, 50 TIMES HERE.

AND IF YOU SMOKE TWO PACKS A DAY AND ARE EXPOSED TO ASBESTOS, 90 TIMES HIGHER. THAT'S SYNERGY. THAT'S MULTIPLYING TWO SUBSTANCES TOGETHER.

NOW, LET ME TALK TO YOU A LITTLE BIT ABOUT WHAT THE DEFENDANTS DID AND WHAT THEY DIDN'T DO.

ONE OF THE THINGS THEY DIDN'T DO WAS, THEY DIDN'T TEST THE WHOLE CIGARETTE TO SEE IF IT WAS SAFE FOR HUMAN CONSUMPTION, OR IF IT COULD BE MADE SAFER. THE WHOLE CIGARETTE (INDICATING).

0606

THESE HAVE NOT BEEN TESTED TO SEE IF THEY ARE SAFE FOR HUMAN CONSUMPTION.

BUT IN SOME WAYS, THE GREATEST EPIDEMIOLOGICAL STUDY EVER DONE ON CIGARETTES IS, OF COURSE, THOSE KINDS OF STATISTICS THAT I JUST SHOWED YOU.

AND YOU'LL HEAR AND SEE INTERNAL MEMOS FROM INSIDE THE CORPORATE OFFICES, FROM INSIDE THE RESEARCH FACILITIES, THAT THEY KNEW THAT THERE WERE CANCER-CAUSING SUBSTANCES IN THEIR PRODUCTS, THAT THEY KNEW THAT THERE WERE WAYS TO REMOVE MANY OF THESE SUBSTANCES, AND THAT SAFER CIGARETTES WERE POSSIBLE.

YOU'LL HEAR FROM PEOPLE WHO WORKED INSIDE THE COMPANIES, IN DOCUMENTS, BY PRIOR TESTIMONY AND HERE IN THIS COURTROOM, AND YOU WILL HEAR THAT PHILIP MORRIS NEVER TRIED TO MAKE A SAFER MARLBORO, THE NO. 1 LEADING CIGARETTE OF TEENAGERS, THE NO. 1 LEADING CIGARETTE IN THE COUNTRY (INDICATING).

AND YOU WILL HEAR THAT R.J. REYNOLDS NEVER TRIED TO MAKE A SAFER CAMEL, THE SECOND LEADING COMPANY BEHIND PHILIP MORRIS, THE ONE THAT'S ALWAYS IN COMPETITION WITH PHILIP MORRIS TO GET THE LUNGS OF PEOPLE.

MR. ESCHER: OBJECTION, YOUR HONOR. THAT'S SO ARGUMENTATIVE.

THE COURT: THAT IS VERY ARGUMENTATIVE, MS. CHABER.

YOU ARE GOING TO NEED TO CONFORM YOUR CONDUCT. THAT WAS OBVIOUSLY ARGUMENTATIVE. THERE COULD HAVE BEEN NO MISTAKE ABOUT IT.

0607

YOU MAY PROCEED, BUT ONLY IF YOU ELIMINATE THE ARGUMENT.

MS. CHABER: THE EVIDENCE WILL SHOW THAT THE FILTERS ON CIGARETTES, ON THESE CIGARETTES (INDICATING), ARE INEFFECTIVE TO FILTER OUT THE CANCER-CAUSING SUBSTANCES

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CAUSED BY THE BURNING OF THE PAPER, THE TOBACCO, THE INSECTICIDES ON THE TOBACCO, THE WAY THE TOBACCO IS CURED, THE TYPE OF TOBACCO IT IS, AND ALL OF THE ADDITIVES THAT THE DEFENDANTS USE IN MAKING AND DESIGNING AND MANUFACTURING THESE CIGARETTES (INDICATING).

THE ONLY TRUE SAFE FILTER IS A CHARCOAL FILTER. AND YOU WILL LEARN THAT THE CIGARETTES IN JAPAN, WHERE SMOKING RATES ARE ACTUALLY HIGHER PER POPULATION THAN HERE AND LUNG CANCER RATES ARE LOWER, THAT THE MAJORITY OF THE CIGARETTES SMOKED THERE ARE CHARCOAL FILTERS.

BUT IF YOU LOOK AT THE SAME JAPANESE POPULATION, WHEN THEY COME HERE TO THE UNITED STATES AND START SMOKING AMERICAN CIGARETTES, THEY GET LUNG CANCER IN THE SAME RATES AS EVERYONE ELSE.

PHILIP MORRIS NEVER TRIED TO PUT A CHARCOAL FILTER ON A MARLBORO. R.J. REYNOLDS NEVER TRIED TO PUT A CHARCOAL FILTER ON A CAMEL LIGHT (INDICATING).

WE HAVE HERE CAMEL LIGHTS (INDICATING). AND YOU'LL HEAR ABOUT LESLIE, AND WHEN SHE SWITCHED TO SMOKING LIGHT CIGARETTES.

THE EVIDENCE FROM THE DOCUMENTS, FROM THE WITNESSES, FROM PEOPLE WHO WORKED INSIDE, IS THAT A MARLBORO LIGHT AND A MARLBORO GIVE YOU THE SAME AMOUNT OF NICOTINE.

0608

YOU THINK YOU'RE GETTING LESS, BUT PEOPLE COMPENSATE FOR WHAT THEY DO TO MAKE A LIGHT CIGARETTE.

AND ONE OF THE THINGS THAT THEY DO IS THEY PUT THESE LITTLE VENT HOLES NEAR THE FILTER (INDICATING). THEY'RE NOT MICROSCOPIC-- AND WE'LL SHOW THEM TO YOU -- BUT THEY'RE PRETTY HARD TO SEE. AND THEY'RE PLACED EXACTLY WHERE MOST PEOPLE HOLD CIGARETTES.

AND BY DOING SO, THEY BLOCK THE VENT HOLES. AND THEY BLOCK THE EXTRA AIR COMING IN. THERE GOES THE LIGHTNESS.

AND THEY DO IT BECAUSE PEOPLE NEED TO GET THE REQUIRED DOSE OF NICOTINE, AND SO THEY SWITCH TO A LIGHT CIGARETTE (INDICATING), LIKE EATING A DIET COOKIE, BUT EATING THE WHOLE BAG TO MAKE UP FOR IT.

AND LIGHT CIGARETTES ARE THEN MADE LONGER, LIKE 100S, WHICH LESLIE ALSO SMOKED.

AND THE LIGHT SMOKER WILL EITHER PUFF DEEPER, SMOKE MORE, SWITCH TO THE LONGER ONE IN ORDER TO GET THE RIGHT AMOUNT OF NICOTINE, IN ORDER TO GET WHAT THEIR BRAIN NEEDS TO MAKE THEM NORMAL. AND BY BREATHING DEEPER AND SMOKING MORE, THEY MAY BE DOING EVEN MORE DAMAGE AND GETTING MORE CARCINOGENS IN.

AND YOU'LL HEAR FROM DOCTORS WHO WORK IN PUBLIC HEALTH, WHO HAVE WRITTEN SURGEON GENERAL REPORTS, WHO HAVE BEEN EDITORS, SCIENTISTS, LIKE DR. RONALD DAVIS, WHO RAN THE OFFICE OF SMOKING AND HEALTH, WAS THE SCIENTIFIC EDITOR OF SEVERAL OF THE SURGEON GENERAL REPORTS, DR. DAVID BURNS, DR. NEAL BENOWITZ. THESE ARE ALL PEOPLE WHO STUDY AND WRITE AND

0609

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PUBLISH IN THE SCIENTIFIC LITERATURE ABOUT TOBACCO AND DISEASE, DOCTORS WHO HAVE BEEN IN THE FOREFRONT OF TRYING TO STOP A WORLDWIDE EPIDEMIC.

AND THEY'LL TELL YOU THAT THE BENEFITS OF THE LIGHT CIGARETTE (INDICATING) ARE AN ILLUSION.

YOU'LL ALSO SEE DOCUMENTS AND HEAR FROM PEOPLE INSIDE THE COMPANIES THAT PHILIP MORRIS AND R.J. REYNOLDS MADE CHOICES TO SCRUTINIZE AND SUPPRESS RESEARCH, INNOVATIONS, ATTEMPTS AT SAFER CIGARETTES, ATTEMPTS TO TAKE OUT CARCINOGENS, THAT THE RESEARCH WAS DESTROYED, THAT LABORATORIES WERE CLOSED, THAT SOME THINGS WERE ONLY DONE OVER IN EUROPE, OUT OF THE REACH OF THE U.S., THAT THEY CENSORED SOME OF THE PUBLICATIONS RATHER THAN EXPOSE THE UNSAFE NATURE OF THEIR PRODUCT.

AND TO THIS DAY, THEY ARE STILL DENYING THAT THEIR CIGARETTES HAVE BEEN PROVEN TO CAUSE CANCER AND OTHER DISEASE (INDICATING).

SMOKERS PICK UP THEIR FIRST CIGARETTE. NO ONE PUTS A GUN TO THEIR HEAD. AND LESLIE DID NOT HAVE A GUN TO HER HEAD WHEN SHE DID AT AGE 13.

YOU WILL HEAR THAT DEPENDENCY KICKS IN TO TAKE AWAY OR TO MAKE FREE CHOICE DIFFICULT.

YOU'LL ALSO HEAR THAT QUITTING, WHILE IT'S RECOMMENDED FOR EVERYONE AND RISKS WILL BE LOWERED AND LESS DISEASE WILL OCCUR, BUT EVEN AFTER 20 YEARS OF HAVING QUIT SMOKING, YOUR RISK IS STILL TWO TIMES INCREASED, A 200 PERCENT INCREASE. THAT'S A HUGE, HUGE RISK.

MR. ESCHER: OBJECTION, YOUR HONOR.

0610

ARGUMENTATIVE.

THE COURT: SUSTAINED.

MS. CHABER: MOST QUITTERS FAIL. SOME PEOPLE ARE LUCKY. SOME PEOPLE NEVER BECAME DEPENDENT. SOME PEOPLE WERE ABLE TO SMOKE THE OCCASIONAL SOCIAL CIGARETTE. THAT WAS NOT LESLIE. AND MOST QUITTERS FAIL.

IN STUDIES THAT HAVE BEEN DONE, USING ALL OF THE TECHNIQUES, PATCHES, GUM, ZYBAN, WHICH IS AN ANTIDEPRESSANT MEDICATION THAT YOU CAN TAKE, THAT AFTER ALL IS SAID AND DONE, A YEAR LATER, ONLY 20 PERCENT OF THE PEOPLE WHO HAVE TRIED TO QUIT USING DOCTOR INTERVENTION AND ALL OF THE THINGS OUT THERE TO REPLACE THE NICOTINE, ONLY 20 PERCENT REMAIN QUIT AFTER A YEAR.

AND THERE HAVE BEEN STUDIES DONE SHOWING THAT CIGARETTE SMOKING IS NOT A DEPENDENCY LIKE CAFFEINE, LIKE HAVING YOUR MORNING COFFEE, LIKE CHOCOLATE, LIKE RUNNING, BUT IT IS LIKENED BY THE SURGEON GENERAL, BY THE PUBLIC HEALTH OFFICIALS, TO DEPENDENCIES SUCH AS HEROIN, MORPHINE, COCAINE.

THERE WAS A STUDY DONE OF VIETNAM WAR VETERANS WHO CAME BACK WHO HAD BOTH DEVELOPED A HEROIN HABIT AND A SMOKING HABIT. AND WHEN THEY CAME BACK, THEY WERE ABLE TO QUIT THE HEROIN BUT THE SMOKING WENT ON.

AND THERE'S ALSO EVIDENCE THAT GIRLS BORN IN THE

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1959 TO 1965 TIME PERIOD, WHEN LESLIE WHITELEY WAS BORN, HAD THE GREATEST PREVALENCE OF SMOKING CIGARETTES, THE HIGHEST PERCENTAGE OF SMOKING.

AND THE EVIDENCE WILL SHOW THAT DURING THAT TIME

0611

PERIOD, THERE WAS A HEAVY CAMPAIGN FOR VIRGINIA SLIMS, SPONSORING SPORTS EVENTS, THE IMAGE OF THE SLENDER, HAPPY, HEALTHY --

MR. FURR: OBJECTION, YOUR HONOR. THAT'S ARGUMENTATIVE.

THE COURT: I DON'T THINK THIS ONE IS. I'LL OVERRULE.

MS. CHABER: -- PERSON ENGAGED IN OUTDOOR SETTINGS, CLIMBING MOUNTAINS, WATER-SKIING, RAFTING.

AND IN 1964, THE SURGEON GENERAL OF THE UNITED STATES CAME OUT WITH HIS REPORT, ISSUED ON A SATURDAY SO AS NOT TO AFFECT THE STOCK MARKET. AND HE SAID:

> CIGARETTE SMOKING IS A CAUSE -- "CAUSE" IN THE ORDINARY USE OF THE WORD "CAUSE" -- "CIGARETTE SMOKING IS A CAUSE OF LUNG CANCER IN MEN. WE'RE NOT SURE YET ABOUT WOMEN, BUT IT LOOKS LIKE THEY'RE FOLLOWING THE SAME PATH," AND THAT'S

BECAUSE WOMEN STARTED LATER.

AND THE EFFECT ON PEOPLE WAS SUCH THAT THERE WAS A DECLINE. THERE WAS A DECLINE IN SMOKING. PEOPLE TALKED ABOUT IT.

THIS IS WHERE WE ARE LESLIE STARTING SMOKING (INDICATING). AND SEE THAT? AND HERE'S -- WHERE WE ARE? WE HAVE THE 1964 SURGEON GENERAL'S REPORT. AND CAN YOU SEE THAT DIP? THAT'S WHAT HAPPENED AFTER THE SURGEON GENERAL'S REPORT. AND THEN IT WENT BACK UP.

AND THE EVIDENCE WILL SHOW THAT THE DEFENDANTS DISPUTED THE SURGEON GENERAL'S REPORT, DISPUTED THE

0612

INFORMATION, SAID IT WAS ONLY STATISTICS, THAT IT DIDN'T PROVE ANYTHING, PUT OUT PRESS RELEASES, PUT OUT THINGS THAT SAID, "THERE'S ANOTHER SIDE TO THE STORY."

HERE'S PLAINTIFFS' DOCUMENT 52, AN OPERATIONS DEPARTMENT PRESENTATION TO THE PHILIP MORRIS BOARD OF DIRECTORS, OCTOBER 28TH, 1964. AND THEY SAY:

> "OUR PHILOSOPHY IS NOT TO START A WAR, BUT IF THE WAR COMES, WE AIM TO FIGHT WELL AND TO WIN."

AND THEN, WHAT WILL BE PLAINTIFFS' 427, A 1967 DOCUMENT FROM R.J. REYNOLDS, "RECENT RESEARCH REVEALS UNANSWERED QUESTIONS ABOUT SMOKING AND HEALTH."

AND THEY SAY THAT:

> "ALL SCIENTIFIC STUDIES" -- THE WHOLE STUDY PUT TOGETHER BY THE SURGEON GENERAL -- "THE RESULTS OF THESE STUDIES RAISE A NUMBER OF IMPORTANT PROBLEMS CONCERNING THE THEORY THAT SMOKING IS A CAUSE OF HUMAN DISEASE."

AND THEY SAY, "IF YOU LOOK AT OTHER THINGS, THE APPARENT IMPORTANCE OF SMOKING DECLINES." THEY DENY RISK

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FACTORS FOR HEART DISEASE, AND CLAIM THAT "THERE ARE STUDIES THAT DEMONSTRATE THE ABSENCE OF A RELATIONSHIP BETWEEN THE AMOUNT OR DURATION OF SMOKING AND LUNG CANCER," STUDIES THAT HAVE BEEN GOING ON SINCE THE 1950S, STUDIES THAT I SHOWED YOU SOME OF THE CHARTS OF.

THEN THEY SAY:

"MANY PUBLISHED STUDIES STRONGLY DISPUTE CONCLUSIONS OF THE 1964 SURGEON GENERAL'S REPORT ON SMOKING AND HEALTH."

0613

DID THEY ACCEPT IT? THEY DISPUTE IT. AND THEY DISPUTE THE ADDICTION, OR THE DEPENDENCE.

THERE ARE ALL THE ORGANIZATIONS (INDICATING), THE AMERICAN MEDICAL ASSOCIATION, AMERICAN PSYCHIATRIC ASSOCIATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION, AMERICAN CANCER SOCIETY.

MR. HARDY: EXCUSE ME. WOULD YOU TAKE THAT OFF.

I HAVE AN OBJECTION TO THIS DOCUMENT.

THE COURT: PLEASE TAKE IT OFF IF THERE'S AN OBJECTION.

MR. HARDY: MAY WE APPROACH, YOUR HONOR?

THE COURT: WELL, IF THERE'S AN OBJECTION --

MR. HARDY: MAYBE WE CAN CLEAR IT UP.

EXCUSE ME JUST ONE SECOND.

(COUNSEL CONFER OFF THE RECORD)

MR. HARDY: I THINK WE HAVE IT SOLVED.

THE COURT: OKAY. GOOD.

MS. CHABER: THE U.S. SURGEON GENERAL, AMERICAN PSYCHOLOGICAL ASSOCIATION, AMERICAN LUNG ASSOCIATION, AMERICAN HEART ASSOCIATION, THE NATIONAL INSTITUTE OF HEALTH, THE HEALTH PROTECTION BRANCH OF THE GOVERNMENT OF CANADA, THE MEDICAL RESEARCH COUNCIL OF THE UNITED KINGDOM, TABLER'S MEDICAL DICTIONARY, THE ENCYCLOPEDIA OF DRUG ABUSE.

AND THE ONLY NO IS THE TOBACCO INDUSTRY.

IN 1977, A PRESS RELEASE THAT SAID THAT:

"THE CONTRIBUTION OF SMOKING TO DISEASE WAS STILL AN OPEN QUESTION AND THAT TOBACCO SMOKE DOES NOT HARM NONSMOKERS."

0614

1979, THEY HAD SPENT $75 MILLION OF RESEARCH IN 20 YEARS TO LEARN WHETHER SMOKING IS HARMFUL, "BUT THE CASE AGAINST CIGARETTES IS NOT SATISFACTORILY DEMONSTRATED."

AND IT GOES ON TO THIS DAY.

THE COURT: LET US KNOW WHEN YOU GET TO A GOOD STOP FOR THE MORNING RECESS.

MS. CHABER: I'M ALMOST DONE, YOUR HONOR. I HAVE ABOUT THREE MORE MINUTES.

THE COURT: WHY DON'T WE --

MS. CHABER: THEN WE'LL TAKE A BREAK AT THAT POINT.

THE COURT: THAT'S A GOOD IDEA.

MS. CHABER: WE WILL ALSO OFFER INTO EVIDENCE PLAINTIFFS' EXHIBIT 599 -- OR ACTUALLY, I TAKE THAT BACK. IT'S NOT PLAINTIFFS' EXHIBIT 599, BUT WHEN I OFFER IT,

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I'LL TELL YOU WHICH EXHIBIT IT IS.

599 ADDITIVES TO CIGARETTES, INFORMATION RELEASED BY THE TOBACCO COMPANIES. THESE INGREDIENTS, THINGS LIKE AMMONIA, BENZOPYRENE, BUTANOL, CAFFEINE, CARBON DIOXIDE, CELLULOSE -- THE LIST GOES ON -- HAVE NOT BEEN TESTED FOR SAFETY WHEN BURNING AND INHALING INTO THE LUNGS.

HERE'S SOME OF THE BIG PROBLEMS. NITROSAMINES, THAT TSNA IS TOBACCO-SPECIFIC NITROSAMINE, ALDEHYDES, POLYAROMATIC HYDROCARBONS, METALS, INCLUDING RADIOISOTOPES, CARBON MONOXIDE, NITROUS OXIDE, AND ALL OF THESE THINGS YOU WILL HEAR CAN BE VIRTUALLY ELIMINATED FROM THE SMOKE.

ARE THERE WAYS TO IMPROVE, TO MAKE SAFER A CIGARETTE?

0615

YOU CAN USE A CHARCOAL FILTER. YOU CAN USE ADDITIONAL SELECTIVE TYPE FILTERS TO REMOVE THOSE PAHS, THE POLYAROMATIC HYDROCARBONS, THE ALDEHYDES. YOU CAN INCREASE THE FILTER LENGTH. YOU CAN INCREASE THE FILTER EFFICIENCY, AND YOU CAN VENTILATE AT THE TOBACCO END AND NOT AT THE FILTER END, WHERE THE HOLES ARE GOING TO GET BLOCKED.

IT CAN REQUIRE THAT TOBACCO GROWERS USE FERTILIZERS THAT DON'T CONTAIN NITRATES, END UP GETTING INTO THE TOBACCO LEAF. THEY CAN SCREEN FERTILIZERS FOR RADIOACTIVE ISOTOPES. THEY CAN AIR-CURE BRIGHT TOBACCO INSTEAD OF BURLEY, WHICH IS MORE HAZARDOUS. THEY CAN USE STRAINS THAT HAVE VIRTUALLY NO TSNA, TOBACCO-SPECIFIC NITROSAMINES.

THEY CAN USE STRAINS HIGH IN CELLULOSE. CELLULOSE IS LIKE THE STRUCTURE OF THE LEAF. THEY CAN USE STRAINS WITH NICOTINE AS THE ONLY ALKALOID, RATHER THAN MIXING SOMETHING CALLED ACID ALDEHYDE AND NICOTINE THAT HAVE AN INTERACTIVE EFFECT.

AND THEY CAN USE STRAINS THAT DON'T CONCENTRATE OR COLLECT NITRATES IN HEAVY METALS. AND THE TOBACCO CAN BE PROCESSED TO EXTRACT ALL THE ALKALOIDS, TO REMOVE TOBACCO-SPECIFIC NITROSAMINES AND NITRATES, TO REDUCE PURIFIED NICOTINE.

YOU CAN ALSO LEAVE THE NICOTINE OUT, REDUCE THE USE OF BURLEY TOBACCO, ELIMINATE THE USE OF ADDITIVES, ESPECIALLY THOSE CONTAINING NITROGEN TO THAT GET AFFECTED BY THE BURNING PROCESS.

THEY CAN USE MORE EXPANDED TOBACCO, SO THAT

0616

THERE'S MORE AIR, AND THEY CAN DECREASE ADDITIVES AND THE SIZING ON RECONSTITUTED TOBACCO OR ELIMINATE IT.

THERE ARE MANY WAYS THAT THE DEFENDANTS COULD HAVE MADE THESE CIGARETTES SAFER. THE TECHNOLOGY WAS THERE. THE RESEARCH WAS SOMETIMES DONE RIGHT WITHIN THEIR OWN FACILITIES.

BUT THEY NEVER DID IT FOR A MARLBORO, A CAMEL, A CAMEL LIGHT OR A CAMEL LIGHT 100. AND THOSE ARE THE

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CIGARETTES AT ISSUE HERE.

AND AT THIS POINT, YOUR HONOR, I THINK THE JURY IS TIRED OF HEARING ME. AND WE COULD USE A BREAK.

AND THEN MR. BROWN IS GOING TO CONTINUE.

THE COURT: OKAY. JURORS, LET'S TAKE A 20-MINUTE RECESS, PLEASE, TILL 11:15.

PLEASE DO NOT DISCUSS THIS CASE WITH ANYONE, INCLUDING EACH OTHER. DON'T LET ANYONE DISCUSS IT WITH YOU. DON'T FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE. AND IF ANYONE SHOULD SEEK TO ENGAGE YOU IN ANY CONVERSATION ABOUT THE CASE, YOU NEED TO REPORT IT TO ME IMMEDIATELY.

WE'LL SEE YOU BACK AT 11:15.

(RECESS TAKEN FROM 10:55 TO 11:20 A.M.)

THE COURT: WE ARE BACK ON THE RECORD. LET ME JUST EXPLAIN TO THE JURY WHAT'S OCCURRING.

AT THE REQUEST OF PLAINTIFFS' COUNSEL, AND WITH THE AGREEMENT OF DEFENSE COUNSEL, PLAINTIFFS' COUNSEL ARE DIVIDING UP THEIR OPENING STATEMENT.

BUT I JUST WANT TO BE CLEAR -- AND THE LAWYERS KNOW THIS ALREADY, BUT THIS IS REALLY FOR THE JURY'S

0617

BENEFIT -- AS WE GO THROUGH THE TRIAL, THOUGH, WHEN WE HAVE A WITNESS ON THE STAND, WE ARE GOING TO HAVE ONE LAWYER FOR A GIVEN PARTY HANDLE BOTH THE EXAMINATION AND THE OBJECTIONS FOR THAT PARTICULAR WITNESS.

BUT THIS IS AN EXCEPTION THAT'S DONE WITH EVERYBODY'S AGREEMENT.

OKAY. MR. BROWN.

MR. BROWN: THANK YOU, YOUR HONOR

OPENING STATEMENT BY MR. BROWN

MR. BROWN: WE HAVEN'T BEEN REALLY INTRODUCED. I'M BOB BROWN. I'M ASSOCIATED WITH THE WARTNICK FIRM, ASSISTING IN TRYING THIS CASE.

I'M GOING TO BE TALKING TO YOU ABOUT THE LESLIE WHITELEY PERSONAL SIDE OF THIS CASE. YOU HEARD NOW ABOUT THE CASE OF WHAT THE DEFENDANTS DID AND DIDN'T DO.

FIRST, I'M GOING TO SHOW YOU A PICTURE OF LESLIE WHITELEY TAKEN WHEN SHE WAS 16. AND IN A MOMENT, I'LL BE TELLING YOU ABOUT HOW THAT'S YEAR SHE GRADUATED FROM HIGH SCHOOL. IT'S THE YEAR SHE GOT MARRIED.

THEN I'M GOING TO SHOW YOU A PICTURE OF LESLIE WHITELEY NOT VERY LONG AGO, WITHIN THE LAST YEAR, DURING HER TREATMENT FOR CANCER.

I TRIED TO SHOW IT ON THERE (INDICATING ELECTRONIC EQUIPMENT). IT JUST DOESN'T COME OUT VERY WELL. I'M GOING TO TRY TO GET CLOSE ENOUGH, WALK ALONG SO YOU CAN TAKE A LOOK AT WHAT LESLIE WHITELEY LOOKED LIKE AT AGE 16 IN 1976.

(PHOTOGRAPH SHOWN TO JURY)

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AND THIS IS A PICTURE OF WHAT SHE LOOKED LIKE IN THE LAST APPROXIMATELY A YEAR, SOMETIME IN THE LAST YEAR, WHEN SHE HAD BEEN RECEIVING SOME OF THE INVASIVE TREATMENT

http://legacy.library.ucsf.edu/tid/zin07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

THAT SHE'S BEEN HAVING TO RECEIVE FOR HER LUNG CANCER.

(PHOTOGRAPH SHOWN TO JURY)

AS YOU CAN SEE, BECAUSE LESLIE WHITELEY IS SITTING OUT IN THE AUDIENCE, HER HAIR HAS GROWN BACK TO SOME EXTENT.

NOW, I HAVE REQUESTED THAT OUR CLIENTS NOT LISTEN TO THE REST OF MY OPENING STATEMENT FOR REASONS THAT WILL BECOME OBVIOUS TO YOU. I'M GOING TO ASK HER TO LEAVE NOW. THEY WON'T BE HERE FOR THE REST OF THIS OPENING STATEMENT. I WILL SAY A FEW THINGS AS THEY LEAVE THAT THEY DON'T NEED TO LISTEN TO.

THE EVIDENCE IS GOING TO SHOW IN THIS CASE THAT LESLIE WHITELEY WAS NOT AN EXTRAORDINARY, UNUSUAL CHILD OR USUAL CHILD.

WHEN SHE GOT TO BE 13, WHICH WAS THE YEAR SHE STARTED TO SMOKE, SHE WAS A 13-YEAR-OLD GIRL, WITH ALL OF THE PLUSES, IF THERE WERE ANY, AND MINUSES THAT A 13-YEAR-OLD GIRLS HAS. SHE WANTED HER INDEPENDENCE. SHE WANTED TO GROW UP. SHE DIDN'T THINK LIKE AN ADULT, AND SHE DIDN'T RECOGNIZE RISKS IN AN ADULT KIND OF WAY.

NOW, THE EVIDENCE WILL SHOW THAT EVERYWHERE SHE LOOKED, SHE SAW ADULTS SMOKING. AND SHE SAW HER OLDER SISTERS AND BROTHERS SMOKING. SHE LEARNED THAT HER PARENTS HAD SMOKED, HER MOTHER AND FATHER, BUT DURING THE PREGNANCY OF ONE OF HER BROTHERS AND SISTER, THE MOTHER HAD DECIDED IT

0619

MADE HER FEEL BAD, AND SO SHE DECIDED SHE WOULDN'T SMOKE WHILE SHE WAS PREGNANT.

AND AT THAT POINT, SHE LAID DOWN A LAW TO THE FATHER AND SAID, "I'M GOING TO QUIT, AND YOU CAN DO WHAT YOU WANT, BUT DON'T SMOKE IN THE HOUSE."

AND SO TROY WHITTAKER -- WHICH WAS HER MAIDEN NAME -- TROY DECIDED IF HE COULDN'T SMOKE IN THE HOUSE, HE WASN'T GOING TO SMOKE.

BOTH PARENTS EXPRESSED TO THEIR CHILDREN STRONGLY THAT IT WAS A DIRTY HABIT, MADE YOUR HAIR SMELL, MADE YOUR CLOTHES SMELL, KIDS SHOULDN'T SMOKE. THEY THOUGHT KIDS SHOULD SMOKE ONLY WHEN THEY GOT TO BE ADULTS, IF THEY WANTED TO.

AND GENERALLY, THE EVIDENCE WILL SHOW THAT THE PARENTS WERE NOT AWARE OF A HIGH RISK OF FATAL DISEASE. THEY JUST DIDN'T KNOW THAT.

IN FACT, THE EVIDENCE WILL SHOW THAT IN THE '50S AND THE '60S AND THE '70S AND '80S, VERY FEW PEOPLE KNEW THAT THERE WAS AN EXTREMELY HIGH RISK OF --

MR. ESCHER: OBJECTION, YOUR HONOR. OBJECTION, YOUR HONOR.

THIS GOES TO THE PREVIOUS RULINGS ON THE MOTION IN LIMINE THAT WE DISCUSSED EARLIER.

MR. BROWN: WE ARE TALKING ABOUT RELIANCE, YOUR HONOR.

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

THE COURT: WELL, IF YOU ARE TALKING ABOUT RELIANCE, FOR THE MOMENT, AT LEAST, YOU CAN LIMIT IT TO WHAT THE PARENTS THOUGHT.

0620

WHY DON'T WE PROCEED THAT WAY FOR THE MOMENT.

MR. BROWN: ALL RIGHT.

IN THE ENVIRONMENT IN WHICH SHE WAS BORN INTO, THE EVIDENCE WILL SHOW THAT A HIGH RISK OF CANCER WAS NOT APPRECIATED.

MR. ESCHER: OBJECTION, YOUR HONOR. IT'S EXACTLY THE ISSUE.

MR. BROWN: THAT GOES RIGHT TO RELIANCE. THAT IS WHAT THE EVIDENCE WILL SHOW.

THE COURT: IF YOUR PURPOSE -- AS I UNDERSTAND THE WAY YOU DIVIDED UP YOUR ARGUMENT, THAT FALLS OUTSIDE THE AREA WAS THAT ALLOCATED TO YOU, IN ANY EVENT.

MR. BROWN: THIS IS ABOUT HER PERSONALLY, WHAT SHE FELT.

THE COURT: DON'T TALK ABOUT WHAT HER PARENTS THOUGHT, WHAT HER FATHER THOUGHT. I THOUGHT THAT WAS THE OBJECTION.

IF YOU ARE TALKING ABOUT WHAT OTHER PEOPLE THOUGHT, THEN I CAN AVOID RULING ON THIS LEGAL ISSUE BY SAYING THAT YOU ARE IN MS. CHABER'S AREA. SHE HAS COVERED THAT.

AND THAT'S MY UNDERSTANDING OF THE DIVISION OF THE RESPONSIBILITY. SO WE CAN DUCK THE LEGAL ISSUE RIGHT NOW BY ASKING YOU TO LIMIT YOURSELF TO THE AGREED AREA, WE'LL PUT IT OFF AS LONG AS WE CAN.

I'M SURE I WILL BE ASKED WHEN THE RIGHT TIME ARISES, AND THEN I WILL DO IT.

MR. BROWN: NOW, THE EVIDENCE WILL SHOW THAT, AT

0621

THE AGE OF 13, BEING A FEMALE CHILD, LESLIE WHITELEY FELL RIGHT INTO THE AREA OF MARKETING STUDIES THAT YOU'VE ALREADY HEARD ABOUT.

SHE STARTED AT AN AGE IN WHICH -- TAKE THAT BACK. AT THE TIME SHE STARTED HER SMOKING, SHE WAS WITH A GROUP OF CHILDREN IN A LITTLE VILLAGE CALLED OJAI DOWN IN SOUTHERN CALIFORNIA, BIG MOUNTAINS TO THE EAST, 25 MINUTES OR SO TO VENTURA, TO THE BEACH.

AND THE CHILDREN THAT SHE GREW UP WITH STARTED AROUND AGE 13 OR 14. MOST OF THEM SMOKED, AS SHE DID.

SHE ALSO, LIKE MOST OF THE CHILDREN IN THAT ENVIRONMENT, TRIED SMOKING POT. SHE DID IT WITH AN AVERAGE FREQUENCY OF LESS THAN A WEEK, ONCE A WEEK. SHE DID THAT THROUGHOUT HER HIGH SCHOOL.

I MIGHT SAY THAT AFTER -- THE EVIDENCE WILL SHOW THAT AFTER HIGH SCHOOL, THAT FREQUENCY WENT DOWN. SHE WASN'T VERY ENTHUSIASTIC ABOUT MARIJUANA. SHE DIDN'T LIKE IT THAT MUCH.

(REPORTER INTERRUPTION)

MR. BROWN: NOW, IT'S PART OF THE EVIDENCE, SHE WAS NOT UNUSUAL IN HER ENVIRONMENT. AS I MENTIONED, SHE BEGAN TO SMOKE AT 13. MOST OF THE CHILDREN DID. SHE EXPERIMENTED WITH SOME MARIJUANA. MOST OF THE CHILDREN

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

DID. SHE USED LSD TWICE BEFORE SHE LEFT HIGH SCHOOL.

AND BECAUSE I TOLD YOU THAT, I ALSO WANT TO MAKE IT CLEAR THAT THE EVIDENCE IS GOING TO SHOW THAT NONE OF THAT CONTRIBUTED TO HER LUNG CANCER.

NOW, AFTER LIVING AT HOME FROM 1959 TO 1976, SHE

0622

GRADUATED AT AGE 16, WHICH WAS THE PICTURE THAT I JUST SHOWED YOU, AND SHE MOVED TO VIRGINIA.

AND THERE, SHE MARRIED HER BOYFRIEND FROM HIGH SCHOOL. HE'S THE ONE THAT OWNED THE WATER PIPE, THE BONG FROM WHICH THEY HAD THEIR OCCASIONAL MARIJUANA. HIS NAME WAS DEAN MOORE. AND HE WAS STATIONED IN THE UNITED STATES NAVY ABOARD A SHIP, AN LST CALLED THE USS SAGINAW.

LET ME GO BACK TO HER GROWING-UP PART. SHE WAS IN A BIG FAMILY. SHE HAD -- SHE WAS ONE OF SIX CHILDREN. SHE WAS THE FIFTH ONE BORN. SHE HAD AN OLDER BROTHER, MIKE, WHO WAS BORN IN 1947. SHE HAS AN OLDER SISTER, CHRISTINE, BORN IN 1952. SHE HAD AN OLDER SISTER, REBECCA, BORN IN 1954. AN OLDER BROTHER BORN IN 1957. AND AFTER HER BIRTH, IN 1963, HER BROTHER DAVID WAS BORN.

NOW, DURING THE PERIOD THAT SHE WAS GROWING UP, SHE SAW TELEVISION ADS PUT ON BY THE TV PEOPLE, AND SHE SAW OTHER KINDS OF ADS. SHE SAW ADS, FOR EXAMPLE, VIRGINIA SLIMS: "YOU'VE COME A LONG WAY, BABY."

SHE SAW THESE IMAGES YOU HAVE BEEN HEARING ABOUT, SLIM AND SLENDER AND HEALTHY PEOPLE. AND IN 1959, THE YEAR SHE WAS BORN, AND OVER THE NEXT 15 YEARS, SHE BECAME PART OF A CLASS -- YOU MIGHT CALL THEM THE CLASS OF '59 -- SHE BECAME PART OF A GROUP OF GIRLS BORN IN THE YEAR '59. AND FOR THE NEXT SEVERAL YEARS, THAT HAD THE GREATEST PREVALENCE OF SMOKING, THE GREATEST PERCENTAGE EVER.

AND NOW, THE EVIDENCE WILL SHOW THAT THAT GROUP IS BEGINNING TO DEVELOP THE LUNG CANCER THAT COMES WITH THEIR SMOKING.

0623

NOW, THE EVIDENCE -- EXCUSE ME -- THE ADVERTISEMENTS WERE AIMED AT THE GROUPS OF CHILDREN. THEY WERE AIMED AT HER SPECIFICALLY. THEY WERE AIMED AT HER PEERS.

SHE WILL TESTIFY THAT EVERYTHING SHE WAS DOING, SHE FELT LIKE SHE SHOULD DO IT.

AND THE EVIDENCE WILL BE ON THE ADVERTISING THAT HER PEERS WERE INFLUENCED, AND THEREFORE, SHE WAS INFLUENCED, AND THAT SHE WAS INFLUENCED DIRECTLY AND INDIRECTLY BY THAT ADVERTISING.

NOW I'D LIKE TO SHOW THAT VIDEO. WE HAVE A VIDEO, YOUR HONOR, OF SOME TV COMMERCIALS THAT LESLIE WHITELEY RECALLS SEEING.

THE COURT: LET ME JUST ASK, BEFORE YOU TURN IT ON, IS THERE SOUND TO THIS?

MS. CHABER: THERE IS, YES.

THE COURT: IS THIS GOING TO BE SOMETHING THAT

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YOU WANT TO DO IT ON THE RECORD?
MS. CHABER: I THINK SO.
THE COURT: ALL RIGHT.
MS. CHABER: IF THERE'S A PROBLEM, WE'LL SUBSEQUENTLY TRY --
THE COURT: JUDITH, IF YOU HAVE TROUBLE REPORTING THIS, BECAUSE IT'S GOING TOO FAST, JUST INTERRUPT AND WE'LL TURN THE VIDEO OFF AND FIGURE OUT HOW TO DEAL WITH IT. WE'LL ASSUME IT YOU CAN REPORT IT UNLESS YOU TELL US OTHERWISE.
(VIDEOTAPE PLAYED)
0624
(REPORTER INTERRUPTION)
THE COURT: HOLD ON. STOP.
JUDITH TOLD US THIS IS GOING TOO FAST.
MS. CHABER: WE WILL PROVIDE A TRANSCRIPT OF THE WORDS SAID SUBSEQUENTLY.
THE COURT: ALL RIGHT.
IS THAT AGREEABLE TO EVERYBODY?
WHAT WE'LL DO IS WE'LL HAVE A TRANSCRIPT MARKED AS A COURT EXHIBIT. IT WON'T GO INTO EVIDENCE. AND COUNSEL WILL PROVIDE IT.
AND THE STIPULATION IS THAT THAT'S WHAT WAS PLAYED TO THE JURY. IS THAT AGREEABLE?
MR. HARDY: SO AGREED, YOUR HONOR.
MR. FURR: THAT'S FINE, YOUR HONOR.
MR. ROSSE: YES, YOUR HONOR.
THE COURT: MR. ROSSE, YOU SAID OKAY ALSO?
MR. ROSSE: YES.
THE COURT: GOOD. THANK YOU.
THEN WE HAVE A FURTHER STIPULATION THAT I TAKE IT THAT JUDITH NEED NOT TAKE DOWN THE WORDS ON THE VIDEO, BUT IF COUNSEL STATES ANYTHING, SHE WILL TAKE DOWN COUNSEL'S WORDS. IS THAT AGREEABLE?
MR. HARDY: SO AGREED.
MR. FURR: YES.
MR. ROSSE: YES, YOUR HONOR.
THE COURT: THANK YOU. OKAY. WE CAN PLAY THE VIDEO.
(VIDEOTAPE PLAYED)
0625
THE COURT: THE RECORD SHOULD REFLECT THAT SEVERAL VIDEOS HAVE BEEN PLAYED.
LET ME JUST ASK YOU, MR. BROWN, PLEASE BE SURE AND GET IN TATSUO'S' HANDS BY FIRST THING TOMORROW THE TRANSCRIPT OF THAT.
THE ONLY REASON THAT I'M SAYING THAT IS THAT AS WE GO THROUGH THIS TRIAL, I DON'T WANT TO FALL BEHIND IN MATTERS THAT NEED TO BE DEALT WITH OR WE'LL NEVER CATCH UP.
PLEASE BE SURE TATSUO HAS IT FIRST THING TOMORROW. YOU CAN CLEAR IT WITH THE DEFENSE COUNSEL AS WELL.
MR. BROWN: ALL RIGHT.
THE COURT: THANK YOU VERY MUCH.
MR. BROWN: THANK YOU.
WELL, THAT'S BRINGING BACK SOME MEMORIES, I'M SURE, FOR ALL OF US. IT ALSO INDICATES THAT SOME THINGS

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

AREN'T LIKE THEY USED TO BE.

AND THE EVIDENCE IS GOING TO SHOW THERE WERE A LOT OF THINGS BACK IN THE '50S, '60S AND '70S THAT AREN'T THE WAY THEY ARE NOW.

AND IN THOSE YEARS, THE EVIDENCE WILL SHOW THAT YOU NEED TO LOOK AT THE EVIDENCE IN THE PRISM OF THOSE YEARS.

NOW, WHAT YOU SAW IN THE ADS IS WHAT LESLIE WHITELEY SAW. SHE SAW ADVENTURE. SHE SAW ADULTS. SHE SAW SOME GLAMOR. SHE SAW SOME CARTOONS. SHE SAW A PICTURE OF HEALTHY PEOPLE DOING SOMETHING THAT WAS OKAY TO DO, WHICH WAS TO SMOKE.

0626

SOME OF THE MATTERS THAT HAVE BEEN COVERED HERE I'M GOING TO SKIP ACROSS, EXCEPT WHERE IT DIRECTLY AFFECTS WHAT THE EVIDENCE WILL BE AS TO HOW IT APPLIES TO HER.

LESLIE WHITELEY, THE EVIDENCE WILL SHOW, WAS ONE OF THOSE STARTERS OR LEARNERS. AND THE EVIDENCE WILL SHOW SHE WAS A TARGET, ALONG WITH HER FRIENDS, OF THE ADVERTISING OF THE KIND YOU HAVE JUST SEEN.

THE EVIDENCE WILL SHOW THAT THE DEFENDANTS WENT AFTER LESLIE WHITELEY AND HER FRIENDS AND THEY GOT HER.

YOU HEARD SOMETHING ABOUT THE LIGHT CIGARETTES. WELL, LESLIE SWITCHED TO CAMEL LIGHTS, AND EVENTUALLY TO CAMEL LIGHTS 100S SOMETIME AROUND 1980, ALTHOUGH SHE STARTED SMOKING AT AGE 13 IN 1972.

AND WHEN SHE SWITCHED TO THE LIGHTS, SHE BEGAN TO INCREASE HER SMOKING TO HALF -- IN HIGH SCHOOL, IT WAS HALF A PACK AND SOMETIMES A LITTLE MORE. BY THE TIME SHE HAD BEEN OUT OF HIGH SCHOOL FOR AWHILE, IT WAS UP TO ABOUT A PACK, PERHAPS A LITTLE LESS.

AND WITHIN A TIME, SOMETIME AFTER SHE SWITCHED TO LIGHTS, IT WENT UP TO ONE AND A HALF PACKS. SO THAT COULD BE SOMEWHERE IN THE EARLY '80S. AND IT LASTED UNTIL SHE QUIT SMOKING IN 1998.

NOW, ON THE SUBJECT OF RELIANCE, THE EVIDENCE IS GOING TO SHOW THAT LESLIE WHITELEY WAS JUSTIFIED IN LISTENING TO THE PUBLIC STATEMENTS THAT WERE BEING MADE THAT YOU ALREADY HEARD FROM MS. CHABER. BECAUSE THE EVIDENCE IS GOING TO SHOW THAT SHE TRUSTED THESE BIG AMERICAN TOBACCO COMPANIES NOT TO COMMIT A FRAUD. SHE TRUSTED THEM NOT TO

0627

SELL A PRODUCT WHERE AS MUCH AS 40 TO 50 PERCENT OF THEIR CUSTOMERS WOULD DIE FROM A SMOKING DISEASE. SHE DIDN'T KNOW THAT THAT WOULD HAPPEN TO AS MANY AS HALF OF THOSE WHO SMOKED. SHE DIDN'T BELIEVE THAT THE GOVERNMENT WOULD PERMIT THEM TO SELL A CIGARETTE THAT DANGEROUS.

SHE DID, IN SUM, NOT BELIEVE THAT THERE WAS ANY SERIOUS RISK OF A FATAL DISEASE. WHAT SHE HAD, WHAT EVERYBODY HAD AT THAT TIME, SHE HAD A COMMON KNOWLEDGE ABOUT

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

CIGARETTES WEREN'T GOOD FOR YOU. THEY WEREN'T SUPPOSED TO BE SMOKED BY KIDS.

SHE WAS CONCERNED ABOUT HER RUNNING, BECAUSE SHE DID A LOT OF RUNNING AT THE SCHOOL. AND SHE WAS CONCERNED THAT SHE WOULD BE SHORT OF BREATH. AS IT TURNED OUT, SHE WAS SMOKING AND SHE WASN'T SHORT OF BREATH, SO THAT CONCERN WENT AWAY.

SHE HAD A GRANDMOTHER WHO SMOKED A LOT, AND SHE WAS QUITE ELDERLY ALREADY WHEN SHE WAS 13. THE EVIDENCE WILL SHOW THAT HER GRANDMOTHER LIVED TO BE IN HER 80S, AND SHE HAD A SMOKER'S COUGH, YOU KNOW, SERIOUS COUGH.

SO LESLIE THOUGHT THAT WHEN YOU GOT OLDER, YOU COULD GET A COUGH LIKE THAT. SHE HAD ALL THOSE KINDS OF THINGS WHICH PEOPLE COMMONLY THOUGHT.

BUT AS THE EVIDENCE WILL SHOW, SHE DID NOT AND HER FRIENDS DID NOT AND HER FAMILY DID NOT UNDERSTAND THAT SHE WAS ENGAGING IN AN UNDERTAKING WHERE HALF OF THE PEOPLE OR ALMOST HALF OF THE PEOPLE WOULD DIE FROM USING IT. IN OTHER WORDS, SHE DIDN'T KNOW THERE WAS AN EXTREMELY HIGH, SERIOUS RISK OF FATAL ILLNESS.

0628

NOW, DURING THIS PERIOD WHEN SHE WAS GROWING UP, SHE HAD ASBESTOS EXPOSURE. I WANT TO TALK ABOUT THAT.

HER FATHER WAS A STEAMFITTER, PLUMBER, STEAMFITTER. AND HE WORKED ON A VARIETY OF JOBS, INCLUDING BIG POWER PLANT CONSTRUCTION JOBS DOWN IN THE VENTURA AREA. AND IN DOING SO, HE WAS EXPOSED TO A LOT OF ASBESTOS FIBERS.

STARTING IN 1959, FOR THE NEXT COUPLE OF YEARS -- HE WAS A UNION REP FOR JUST A FEW YEARS, BUT EVEN DURING THAT PERIOD OF TIME, HE VISITED CONSTRUCTION SITES, AND THOUGH HE HAD A BUSINESS SUIT ON, HE GOT FIBERS ON HIS CLOTHES.

LET ME TELL YOU A LITTLE BIT ABOUT THOSE FIBERS. THE EVIDENCE WILL SHOW THAT THESE FIBERS THAT ARE THE MOST DANGEROUS IN ASBESTOS ARE THOSE YOU CAN'T SEE. IF YOU CAN'T SEE THEM, THAT'S WHEN THEY'RE THE MOST DANGEROUS. THERE ARE MILLIONS AND BILLIONS OF THEM THAT WHEN SOMEONE IS NEAR AN ASBESTOS WORKER WILL DRIFT IN THE AIR AND SETTLE OR THEIR CLOTHING.

AND THE EVIDENCE WILL SHOW THAT THAT CLOTHING WENT HOME, AS YOU'D EXPECT IT TO, ALONG WITH THE FATHER, EVEN DURING THOSE YEARS WHEN HE WORE A BUSINESS SUIT FOR A COUPLE OF YEARS.

THEN, AFTER THAT, HIS WORK CLOTHES WENT HOME, AND THAT THIS WENT ON FROM 1959, WHEN SHE WAS BORN, ON A CONTINUOUS MONDAY THROUGH FRIDAY, UP UNTIL THE TIME SHE LEFT HOME IN 1976.

THE DEFENDANT METALCLAD IS THE ASBESTOS DEFENDANT

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IN THIS CASE. AND WE ARE GOING TO TIE UP WITH OUR EVIDENCE THAT METALCLAD FIBERS, THE FIBERS THEY'RE RESPONSIBLE FOR, WERE EXPOSED TO THE FATHER, AND THEN TRANSPORTED HOME AND EXPOSED TO THE FAMILY, INCLUDING LESLIE, SUBSTANTIALLY THROUGHOUT THE '60S, BECAUSE THEY WERE THE EXCLUSIVE SUPPLIER OF PABCO INSULATION MATERIAL, AND HE WORKED AROUND A LOT OF PABCO.

AND THEN, GENERALLY IN 1959 THROUGH 1973, METALCLAD WAS THE INSULATING COMPANY THAT SUPPLIED AND INSTALLED THE INSULATION ON THE CONSTRUCTION OF THE ORMOND BEACH PLANT, WHICH IS IN THE VENTURA AREA.

AND THAT ON A DAILY BASIS, WORKING AS A STEAMFITTER, HE HAD A LARGE DOSAGE OF ASBESTOS FIBERS, AND THAT HE TOOK THEM HOME, AND THOSE FIBERS WERE EXPOSED TO HIS CHILDREN AND TO HIS WIFE. THEY WERE -- WE WILL SHOW BY THE EVIDENCE THAT THEY WERE IN THE CAR, THEY WERE IN THE HOME, AND THEY WERE IN THEIR CLOTHING.

NOW, IN THE EARLY YEARS, WHILE SHE WAS YOUNG, YOUNGER, SHE AND ALL OF HER BROTHERS AND SISTERS WOULD RUN OUT TO MEET THEIR DAD AND CLIMB ALL OVER HIM, JUMP ON HIM. THERE WAS SORT OF A FAMILY TRADITION THAT WHEN HE CAME HOME, HE HAD SOMETHING IN HIS LUNCH PAIL, SO THEY'D COME CLIMBING ALL OVER HIM.

THOSE CLOTHES WOULD BE TAKEN OUT, THROWN IN A PILE. THE KIDS WOULD PLAY ON THEM. THEY'D JUMP UP AND DOWN IN THEM, THROW THEM AROUND, ALL THIS CAUSING FIBERS TO GO INTO THE AIR, EVEN IF YOU CAN'T SEE THEM.

AND LATER ON, WHEN SHE WAS 10, 11, 12 YEARS OLD,

0630

SHE AND HER BROTHERS AND SISTERS HELPED HER MOTHER WASH HIS CLOTHES.

NOW, THE FATHER DURING THIS PERIOD OF TIME WORE TWO KINDS OF CLOTHING, HE EITHER WORE COVERALLS OR OVERALLS THAT COVER ALL -- I'M TALKING ABOUT THE KIND -- MAYBE I DON'T MEAN OVERALLS. I MEAN THE KIND THAT HAS SORT OF SUSPENDERS AND A GAP ON THE SIDE.

WHEN HE WORE THOSE, HE TENDED TO TAKE THOSE OFF AT WORK AND LEAVE THEM AT WORK. SO HE'D ONLY BRING THOSE HOME, AS HIS WIFE WILL TESTIFY, WHEN THEY GOT SO STIFF HE THOUGHT THEY OUGHT TO COME HOME.

EVEN ON THOSE DAYS, THE FIBERS WOULD GET ON HIS SHIRTS, DOWN IN THE AREA UNDERNEATH THOSE COVERALLS, AND HE WOULD COME HOME WITH THOSE CLOTHES.

SO THE SAME THING WOULD HAPPEN WHEN THE COVERALLS CAME HOME. IT WAS EVEN WORSE. THEY WERE REALLY COVERED WITH THE ASBESTOS FIBERS.

NOW, THE EVIDENCE OF HIS EXPOSURE TO ALL THAT ASBESTOS FOR THE PERIOD OF TIME 1959 TO 1976 WILL SHOW THAT THERE WAS A SUFFICIENT EXPOSURE TO ASBESTOS THERE TO CAUSE A

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

LUNG CANCER, SUFFICIENT.

AND WE'LL SHOW SPECIFICALLY THAT, AS A SYNERGISTIC EFFECT, THAT IS, ALONG WITH HER SMOKING, IT WAS MORE THAN ENOUGH TO CAUSE A CONTRIBUTION TO HER LUNG CANCER ALONG WITH THE SMOKING.

IN TERMS OF THE POWER PLANT, I JUST WOULD MENTION ONE FINAL TIME, THE EVIDENCE WILL SHOW THAT TROY WHITTAKER WAS WORKING NEAR AND AMONG THOSE INSULATORS, AND AS A

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STEAMFITTER ALSO WORKED DIRECTLY WITH ASBESTOS, WITH PACKING AND WITH VALVES. SO WE HAVE DIRECT EXPOSURE TO THE ASBESTOS FIBERS.

NOW, HE WAS A SUPERVISOR, BUT HE STILL WORKED WITH HIS MEN, VERY CLOSE TO THEM, SO THAT WHEN THEY DISTURBED ASBESTOS, WHEN THE INSULATORS DISTURBED ASBESTOS, THE FIBERS WOULD GO IN THE AIR AND THEY WOULD SETTLE ON HIS CLOTHES.

SHE HAD ANOTHER EXPOSURE TO ASBESTOS, AND THAT WAS WHEN SHE WAS BACK IN VIRGINIA. I TOLD YOU SHE GRADUATED FROM HIGH SCHOOL IN 1976, 16 YEARS OLD. SHE WENT BACK TO VIRGINIA, WHERE SHE MARRIED DEAN MOORE, HER HIGH SCHOOL BOYFRIEND.

DEAN WAS ON THE USS SAGINAW, AN LST. AND WHILE THEY WERE THERE, THERE WAS AN ENGINE OVERHAUL BEING DONE ON THAT LST. SO THE EVIDENCE WILL SHOW THAT CREATES A LOT OF ASBESTOS EXPOSURE, BECAUSE AN ENGINE OVERHAUL IN A NAVY SHIP INVOLVES WORKING WITH LITERALLY HUNDREDS OF YARDS, IF NOT MILES OF ASBESTOS INSULATION REMOVED AND REINSTALLED. IT'S AN ASBESTOS NIGHTMARE.

DURING THAT OVERHAUL PERIOD THAT WAS WHAT WAS GOING ON -- NOW, THERE'S TWO RECOLLECTIONS. YOU WILL HEAR A CONFLICT. DEAN MOORE SAID HE BELIEVES HE LEFT HIS WORK CLOTHES AT THE NAVY YARD. THEY WERE WASHED THERE. SHE RECALLS THAT THEY CAME HOME. SHE WASHED THEM AT HOME.

WE THINK THE EVIDENCE WILL SUGGEST THAT THE PERSON WHO WAS DOING THE HEAVY LIFTING MAY HAVE A BETTER OPPORTUNITY TO REMEMBER EXACTLY WHAT WAS GOING ON, AND VERY

0632

POSSIBLY MAYBE BOTH WERE GOING ON.

YOU HAVE HAD SOME DISCUSSION OF SYNERGISM, BUT IN FACT, HERE IS WHAT HAPPENS TO LESLIE WHITELEY.

LET ME HAVE A DRINK OF WATER HERE.

LESLIE WAS A 25-PACK-YEAR SMOKER. THAT'S ON THE AVERAGE, BECAUSE I TOLD YOU SHE SMOKED A HALF A PACK FOR THE EARLY PART OF HER LIFE AND A PACK, AND THEN EVENTUALLY UP TO A PACK AND A HALF.

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

SO OVER 25 YEARS' DURATION, SHE WAS APPROXIMATELY A 25-YEAR, 25-PACK-YEAR SMOKER, MEANING A PACK A DAY FOR 25 YEARS, ON AVERAGE.

THAT PUTS HER IN AN EXTREMELY HIGH RELATIVE RISK FOR LUNG CANCER FROM THE SMOKING, SOMETHING OVER 20 -- SOMETHING OVER TWENTYFOLD HIGHER RISK OF LUNG CANCER THAN SOMEBODY WHO NEVER SMOKED.

ASBESTOS EXPOSURE NEVER GETS ANY HIGHER THAN AROUND FOUR OR FIVE. AND THAT'S FOR VERY HEAVY EXPOSURE. SHE DIDN'T HAVE HEAVY EXPOSURE. SHE HAD THE LIGHT EXPOSURE I TALKED ABOUT. AND THAT KIND OF EXPOSURE CAN CREATE SYNERGY THAT GOES DOWN TO TWO, GOES LOWER THAN TWO, TO 1.5. THERE WILL BE EXPERT TESTIMONY ON THAT.

BUT THE EFFECT OF THAT SYNERGISTIC CAUSATION ON LESLIE WHITELEY SPECIFICALLY WAS THAT, USING 20 -- IT'S ACTUALLY HIGHER THAN 20 AS A RELATIVE RISK FOR SMOKING -- AND USING TWO FOR THE RELATIVE RISK OF THE ASBESTOS, SHE IS AT A RELATIVE RISK OF 40, OR MAYBE IT WAS 1.5 TIMES 20, SO IT'S 30, THIRTYFOLD MORE CHANCE OF DEVELOPING LUNG CANCER OR FORTYFOLD MORE OPPORTUNITY, MORE CHANCE TO DEVELOP LUNG

0633

CANCER. THIS IS IN COMPARISON TO SOMEONE WHO IS NOT EXPOSED TO ASBESTOS AND WHO DOES NOT SMOKE.

SHE DIDN'T KNOW THAT. FIRST OF ALL, SHE DIDN'T KNOW THAT THE RISK OF SMOKING WAS AS HIGH AS THESE FIGURES I JUST GAVE YOU, THE TWENTYFOLD.

AND FURTHER, THE EVIDENCE WILL SHOW SHE DIDN'T KNOW THAT, BECAUSE OF HER EXPOSURE TO ASBESTOS, SHE HAD EVEN A GREATER RISK.

AND THIRD, SHE DIDN'T KNOW THAT BECAUSE SHE WAS FEMALE, A WOMAN, SHE HAD EVEN A GREATER RISK OF LUNG CANCER.

AND FOURTH, SHE DIDN'T KNOW THAT BECAUSE SHE STARTED SMOKING AT 13, THAT BECAUSE SHE WAS A YOUNGER STARTER, SHE HAD EVEN A GREATER RISK OF LUNG CANCER. FOUR FACTORS THAT CONTRIBUTED TO HER VERY HIGH RISK, AS THE EVIDENCE WILL SHOW, THAT SHE WAS NOT AWARE OF.

NOW, AFTER VIRGINIA, NORFOLK, VIRGINIA -- THAT'S WHERE THE USS SAGINAW WAS HOMEPORTED, SHE SPENT -- DEAN MOORE AND LESLIE SPENT SOME TIME IN A NAVY SCHOOL IN PENNSYLVANIA, AND THEN CAME BACK TO SAN DIEGO WHERE HE WAS ASSIGNED TO THE USS PIGEON, A SUBTENDER. AND SHE WAS ONLY IN SAN DIEGO ABOUT SIX MONTHS. WE DON'T KNOW OF ANY ASBESTOS EXPOSURE THERE. WE DON'T KNOW OF ANY ASBESTOS EXPOSURE IN THE NAVY SCHOOL.

AND AFTER SIX MONTHS OF THIS YOUNG MARRIAGE THAT STARTED WHEN SHE WAS 16, THERE WAS -- LIKE WITH A LOT OF YOUNG MARRIAGES, IT BROKE UP. SHE WENT BACK TO OJAI WHILE HER HUSBAND STAYED DOWN IN SAN DIEGO IN THE NAVY.

BACK IN OJAI, SHE WENT INTO A TOUGH PART OF HER

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LIFE. SHE BECAME MARRIED AGAIN, TO A FELLOW NAMED WESLEY EMHOFF. AND THAT RESULTED -- THEY HAD A RELATIONSHIP SOMEWHERE IN '79 OR SO. THEY WERE MARRIED IN 1980.

IN 1982, THEY WERE SEPARATED. IT WAS AN ABUSIVE MARRIAGE. IT WAS NOT A GOOD SITUATION. AND THERE WAS SOME DRUG USE DURING THAT TIME. MARIJUANA USE WAS ABOUT LIKE I EXPLAINED TO YOU, SHE HAD SOME IV COCAINE USE, THREE, FOUR TIMES. SHE USED LSD ONE MORE TIME. SHE DOESN'T RECALL USING ANY CRACK, BUT SHE MIGHT HAVE. IT WAS A BAD TWO OR THREE YEARS OF HER LIFE. AND SHE CAME OUT OF IT.

AND WITHIN A YEAR OR TWO, SHE MET HER HUSBAND, LEONARD WHITELEY, WHO IS THE OTHER PLAINTIFF IN THIS ACTION.

LEONARD AND LESLIE HAVE, FROM THE BEGINNING, HAD A GREAT RELATIONSHIP AND A GREAT MARRIAGE. THEY HAVE TOGETHER FATHERED AND GIVEN BIRTH TO FOUR CHILDREN, THREE OF WHICH YOU SAW HERE TODAY.

LET ME GIVE YOU SOME IDEA OF SOME OF THE AGES THAT SHE WAS AT VARIOUS TIMES. WHEN SHE GOT DIVORCED, SEPARATED FROM DEAN MOORE, SHE WAS ABOUT 19, 20.

WHEN SHE WENT INTO THIS PERIOD, THIS BAD PERIOD WITH WESLEY EMHOFF, SHE WAS LIKE 21, 22. AND WHEN SHE STARTED HER RELATIONSHIP WITH LEONARD, SHE WAS 23, 24, AND EVENTUALLY MARRIED HIM IN 1986. AND SHE HAS BEEN MARRIED, OF COURSE, TO HIM EVER SINCE.

AND AS FAR AS THE DRUG USE IS CONCERNED, AFTER THE RELATIONSHIP AND THE MARRIAGE TO LEONARD STARTED, AND WENT ON FOR A WHILE, THEY DECIDED THEY WERE GOING TO DO NONE

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OF THAT.

BY THIS TIME, LEONARD WAS SMOKING MARIJUANA. SHE DIDN'T LIKE IT MUCH. HE DID. SO HE HAD IT. SHE WAS INTO BEER. SHE DRANK A LOT OF BEER.

SHE EVENTUALLY GOT TO THE POINT WHERE SHE THOUGHT SHE MIGHT BE AN ALCOHOLIC, BECAUSE SHE DRANK TOO MUCH BEER. SHE DRANK UP TO A SIX-PACK A DAY, ESPECIALLY ON WEEKENDS.

SO SOMETIME AFTER THEY WERE MARRIED, WITHIN A YEAR OR TWO, THEY CONCLUDED THAT THEY WANTED TO GO AHEAD, HAVE CHILDREN. THEY DIDN'T WANT TO HAVE CHILDREN IN A FAMILY WHERE THERE WAS ANY KIND OF DRUGS, NOT REALIZING NICOTINE WAS A DRUG.

SO THEY MADE A DECISION TO, AND THEY DID ELIMINATE EVERY KIND OF DRUG USE. EVERYTHING THAT I HAVE MENTIONED DISAPPEARED AND WAS NEVER USED AGAIN SOMETIME IN THE MIDDLE, LATE 1980S.

SMOKING WAS ANOTHER THING. THEY TRIED. THEY DECIDED THEY DIDN'T WANT TO SMOKE EITHER. AND THEY MADE A TOUGH EFFORT TO QUIT. THEY WERE GOING TO HAVE A VACATION UP IN YOSEMITE FOR TWO WEEKS. THEY DID THEIR BEST. THEY DID THEIR BEST TO STOP AND TO STAY STOPPED.

AND LIFE BECAME MISERABLE. ALL OF THE THINGS WHICH DR. BENOWITZ WILL TESTIFY ON ADDICTION OR DEPENDENCE THAT OCCURS TO PEOPLE WHO TRY TO STOP, IT HAPPENED TO THEM.

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IT WASN'T FUN AND IT WAS GROSS, AND IT WAS VERY DIFFICULT FOR THEM. AND THEY FAILED, LIKE 80 PERCENT FAIL, EVEN IF THEY HAVE HELP.

THEY CAME BACK AND THEY CONTINUED TO SMOKE. HE

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SMOKED MORE THAN SHE DID. SHE SMOKED. BY THIS TIME, BECAUSE SHE WAS SMOKING LIGHTS, BECAUSE HER BODY NEEDED MORE CIGARETTES, LONGER CIGARETTES, BECAUSE THEY WERE LIGHTS, SHE WAS UP TO A PACK AND A HALF AND CONTINUED THAT UNTIL SHE FINALLY DID QUIT IN 1998.

NOW, HER CHILDREN. THE FIRST ONE, BORN 1989, TROY. YOU SAW HIM OUT THERE. I THINK HE IS 11. 1991, TREVOR. HE IS ABOUT NINE.

1993, ELIZABETH, TOWARD THE END OF THE YEAR, IN AUGUST -- I BETTER DO THE MATH. I'M NOT QUITE SURE HOW OLD SHE IS RIGHT NOW.

AND CARL IS THE BABY. HE WAS BORN IN 1994, ALSO IN AUGUST.

AND THE EVIDENCE IS GOING TO SHOW THAT AMONG THE WORST THINGS THAT HAS HAPPENED TO LESLIE BECAUSE OF THIS LUNG CANCER IS THAT SHE CANNOT IMAGINE BEING WITHOUT THOSE CHILDREN AND WITHOUT BEING WITH HER HUSBAND.

AND SHE IS EXTREMELY CONCERNED ABOUT WHAT LIFE WILL BE FOR THEM WHEN THEY DON'T HAVE THEIR MOTHER AND LEONARD DOESN'T HAVE HIS WIFE. AND THE EVIDENCE WILL SHOW THAT HER PROGNOSIS IS SUCH THAT SHE WILL PROBABLY BE DEAD BEFORE NEXT CHRISTMAS.

NOW, I TOUCHED ON THIS LITTLE A BIT BEFORE, BUT I WANT TO MENTION AGAIN THAT HER DECISION TO SMOKE WAS ORIGINALLY THE KIND OF DECISION MADE BY 13-YEAR-OLDS, UNTHINKING. BE COOL. BE LIKE YOUR FRIENDS. BE LIKE THE PEOPLE IN THE ADVERTISEMENTS. BE LIKE THE GIRLFRIEND OF THE COWBOY. BE LIKE PEOPLE IN THOSE BEAUTIFUL PLACES.

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ALL OF THOSE THINGS WERE PROBABLY WHY, THE INITIAL YEARS, SHE BECAME A STARTER. SHE BECAME A SMOKER. SHE BECAME ADDICTED VERY SOON AFTER THAT.

AND THE WORD WAS CERTAINLY AROUND THAT SMOKING COULD CAUSE SERIOUS ILLNESS. CANCER WAS NOTED IN THE 1969 SURGEON GENERAL REPORT. LABELS BEGAN TO GO ON THE CIGARETTES.

BUT DURING THAT SAME PERIOD OF TIME, THE TOBACCO INDUSTRY, AS YOU HEARD, BEGAN TO PUT OUT A STEADY STREAM, A MULTIMILLION DOLLAR, AN EXPENSIVE STREAM OF DENIAL AND CONFUSION AND ATTACKS ON WHAT WAS CLEARLY THE TRUTH, WHICH WAS THAT LUNG CANCER WAS BEING CAUSED AND IT WAS BEING CAUSED IN VERY LARGE NUMBERS BY SMOKING.

I'VE ALREADY MENTIONED SHE TRUSTED THOSE COMPANIES NOT TO SELL HER A DEADLY PRODUCT. SHE WASN'T AWARE OF A LOT OF IMPORTANT FACTS.

FOR EXAMPLE, SHE TRUSTED THE COMPANIES NOT TO SELL HER A DEADLY PRODUCT. SHE TRUSTED THEM NOT TO SELL HER A PRODUCT WHICH WAS DELIBERATELY ENGINEERED TO BE EVEN

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MORE DEADLY. SHE TRUSTED THEM TO SELL HER A CIGARETTE THAT WAS AT LEAST AS SAFE AS IT COULD BE MADE.

WHAT SHE DIDN'T KNOW WAS THAT, WHILE THE TOBACCO DEFENDANTS, THE DEFENDANTS IN THIS CASE, WERE PUMPING OUT THAT MISINFORMATION, THEY HADN'T EVEN TESTED THEIR PRODUCTS.

MR. HARDY: EXCUSE ME. OBJECTION, YOUR HONOR. THIS IS REPETITIOUS OF MS. CHABER'S --

THE COURT: IT IS REPETITIOUS. MS. CHABER COVERED THIS.

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MR. BROWN: SHE COVERED WHAT THEY DID. I'M COVERING WHAT LESLIE WHITELEY UNDERSTOOD AND DIDN'T UNDERSTAND.

THE COURT: WELL, THAT'S A VERY FINE DISTINCTION HERE. LET'S MOVE ON.

MR. BROWN: WELL, MAY I SAY THIS: EVERYTHING YOU HEARD THAT THEY WERE DOING IN TERMS OF THE ENGINEERING OF THOSE CIGARETTES AND NOT DOING, SHE DIDN'T KNOW ANY OF THAT.

THE COURT: LET ME JUST ASK YOU TIMEWISE, APPROXIMATELY HOW MUCH LONGER DO YOU HAVE?

IT'S 12:00 O'CLOCK.

MR. BROWN: YOU KNOW, I ASSUME -- I HOPED, CORRECTLY, THAT I WOULD GO TO 12:15, BECAUSE OF THE 20-MINUTE BREAK. THAT IS WHAT I'M TRYING TO DO.

THE COURT: DO YOU ANTICIPATE BEING DONE BY 12:15?

MR. BROWN: I WILL BE DONE, WHETHER I'M DONE OR NOT.

THE COURT: OKAY. THAT'S FINE.

WHATEVER ARRANGEMENT COUNSEL HAVE MADE IS FINE WITH THE COURT. THAT'S FINE.

MR. BROWN: LESLIE WHITELEY KNEW THAT, KNEW AS MOST PEOPLE DID, THAT IT WAS HARD TO STOP SMOKING. WHAT SHE DIDN'T KNOW WAS THAT IT WAS AN ADDICTIVE DRUG, THE MOST STRONGEST ADDICTIVE DRUG, ONE OF THE STRONGEST ADDICTIVE DRUGS THAT EXISTED, WHETHER YOU CALL IT ADDICTIVE OR DEPENDENT.

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AND SHE DIDN'T REALIZE THAT BY STARTING OUT AS A YOUNG SMOKER, SHE WOULD FALL INTO A STATISTICAL GROUP THAT WOULD KEEP HER SMOKING FOR LIFE OR FOR A VERY LONG TIME. SHE DIDN'T REALIZE, FOR EXAMPLE, THAT ADULTS WHO START SMOKING ARE LIKELY TO QUIT BUT THAT CHILDREN ARE NOT.

I THINK I TOLD YOU THAT HER INITIAL CIGARETTE WAS MARLBORO, MARLBORO, MARLBORO LIGHTS. SHE EXPERIMENTED A LITTLE BIT WITH CAMEL STRAIGHTS. AND THEN SOMETIME IN AROUND 1980 SHE SWITCHED TO CAMEL LIGHTS. AND A LITTLE TIME AFTER THAT, SHE SWITCHED AGAIN TO CAMEL LIGHTS 100, A LONGER CIGARETTE.

NOW, IN 1998, SHE WAS DIAGNOSED IN JUNE WITH LUNG CANCER, SMALL CELL CARCINOMA. THE EVIDENCE WILL SHOW THAT

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THAT'S A VERY, VERY COMMON LUNG CANCER ATTRIBUTED TO SMOKING. AND IT'S COMMON IN WOMEN.

AND I DON'T BELIEVE THERE'S ANY DISPUTE THAT THIS IS A PRIMARY LUNG CANCER. IT STARTED IN HER LUNG.

AND WITH SOMETHING ELSE WHICH IS EXTREMELY COMMON. IT METASTASIZED TO THE BRAIN. SO AS A RESULT, SHE HAS HAD COMBINED RADIATION OF THE LUNG AND CHEMOTHERAPY ALL AT THE SAME TIME.

SHE HAS HAD TWO RADIATIONS TO THE BRAIN. AND THEN FINALLY, THEY HAD TO DO RADIAL SURGERY ON THE BRAIN. HER RADIATION WAS FOR FIVE DAYS A WEEK ON THE LUNG, 28 TREATMENTS. SHE RECEIVED CHEMOTHERAPY EVERY THREE WEEKS FOR SIX MONTHS.

SHE HAS DIFFICULTY SWALLOWING OR DRINKING. SHE HAS SOME GOOD DAYS AND BAD DAYS. SOMETIMES, SHE JUST HAS TO

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STAY ON THE COUCH. SHE CAN'T FUNCTION.

BUT SOMETIMES SHE GETS TO WORK IN HER YARD. SHE LIVES IN A BEAUTIFUL PLACE. SHE LIVES ON SOME PROPERTY THAT IS NEXT TO THE FAMILY. HER FATHER, I THINK, OWNS IT. IT'S SORT OF SOME ACREAGE. THEY CALL IT THE RANCH OR THE OVERGROWN RANCH I THINK IS WHAT THEY CALL IT.

SO THEY HAVE A NICE PLACE THERE. AND SHE DOES WANT TO DO A LOT OF WORK ON IT. AND SOMETIMES SHE HAS BEEN ABLE TO DO THAT.

BEFORE THIS CANCER HIT, SHE WAS IN EXTREMELY GOOD HEALTH. THERE WAS NO INDICATION OF ANY SIGNIFICANT ILLNESS OR SERIOUS ILLNESS PRIOR TO THIS LUNG CANCER.

SHE IS NOW SITTING IN A STAGE WHERE HER PROGNOSIS IS DIFFICULT, BECAUSE WHAT TYPICALLY HAPPENS IN A PATIENT LIKE THIS IS THAT WHAT'S GOING LEAD TO HER DEATH IS SOME CATASTROPHIC EVENT. AND WE DON'T KNOW WHEN THAT WILL HAPPEN. WE DON'T KNOW WHAT IT WILL BE. BUT THE EVIDENCE WILL SHOW THAT SHE WILL DEFINITELY DIE OF SOME LUNG CANCER-RELATED EVENT THAT OCCURS.

IN EARLY 1998, IN FEBRUARY, FOUR OR FIVE MONTHS BEFORE SHE WAS DIAGNOSED, SHE HAD AN ATTACK OF BRONCHITIS, AN INFECTIOUS BRONCHITIS, AND IT WAS TREATED WITH ANTIBIOTICS. AND IN WEEK, OR TWO AT THE MOST, IT CLEARED UP AND WENT AWAY.

ABOUT FOUR MONTHS LATER IS WHEN THEY DIAGNOSED THE LUNG CANCER. BUT AT THE TIME OF THE BRONCHITIS, ONE OF HER DOCTORS WARNED HER THAT IF SHE KEPT SMOKING, SHE MIGHT HAVE SOME OF THOSE ATTACKS AGAIN, AND SO SHE STOPPED. THAT

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IS WHEN SHE QUIT IN FEBRUARY OF 1998, AND HASN'T SMOKED SINCE.

FROM HERE, WHAT'S THE COURSE GOING TO BE?

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WELL, I HAVE ALREADY MENTIONED, SHE IS GOING TO DIE, AND PROBABLY BEFORE CHRISTMAS, OF THE LUNG CANCER.
SHE WILL GO THROUGH PROBABLY MORE TREATMENT, PERHAPS MORE RADIATION, PERHAPS MORE CHEMOTHERAPY. THERE WILL BE SOME MEDICAL TESTIMONY ON THAT. SHE WILL ENDURE A GREAT DEAL OF PHYSICAL SUFFERING. SHE WILL CONTINUE TO ENDURE A GREAT DEAL OF MENTAL SUFFERING BECAUSE OF HER CONCERNS ABOUT HER CHILDREN AND HER FAMILY AND ABOUT HER OWN FEAR OF WHAT'S GOING TO HAPPEN.
AT THE END OF TRIAL, WE ARE GOING TO ASK YOU TO DO TWO THINGS. FIRST, WE WILL SUGGEST TO YOU THAT YOU SHOULD RETURN A VERDICT IN HER FAVOR, AND WHICH SHOULD BE A FAIR, REASONABLE AND JUST VERDICT, AND A VERY SUBSTANTIAL ONE.
THAT VERDICT WILL INCLUDE HER SUFFERING, COMPENSATION FOR HER SUFFERING, FOR HER MEDICAL EXPENSES AND SOME OTHER ECONOMIC LOSSES THAT YOU WILL HEAR ABOUT.
WE WILL ALSO ASK YOU TO RETURN A FINDING THAT THE CONDUCT OF THIS DEFENDANT --
MR. HARDY: OBJECTION, YOUR HONOR. THIS IS ARGUMENT.
THE COURT: THIS IS ARGUMENT.
MR. BROWN: I'M SORRY?
THE COURT: THIS IS ARGUMENT. THE OPENING STATEMENT NEEDS TO BE LIMITED TO WHAT YOU IN GOOD FAITH
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BELIEVE THE EVIDENCE --
MR. BROWN: WE BELIEVE --
THE COURT: PLEASE DON'T INTERRUPT.
MR. BROWN: I'M SORRY, YOUR HONOR. I DIDN'T REALIZE YOU HADN'T STOPPED.
THE COURT: WHAT I'M TELLING YOU IS AN OPENING STATEMENT HAS TO BE LIMITED TO A GOOD FAITH STATEMENT OF WHAT THE EVIDENCE WILL SHOW.
LET'S NOT PREDICT WHAT I'M GOING TO ASK THE JURY AT THE END OF THE CASE, PLEASE.
MR. BROWN: ALL RIGHT.
THE COURT: THANK YOU.
MR. BROWN: THAT THE CONDUCT OF THE DEFENDANTS, BOTH OF THEM -- I'M NOT TALKING ABOUT METALCLAD NOW. I'M TALKING ABOUT PHILIP MORRIS AND RJR, R.J. REYNOLDS -- WE'RE GOING TO SHOW THAT THEIR CONDUCT WAS MALICIOUS --
MR. FURR: OBJECTION, YOUR HONOR. THIS IS ARGUMENTATIVE.
THE COURT: SUSTAINED.
MR. BROWN: THE EVIDENCE WILL SHOW THAT THEY HAVE DELIBERATELY MISLED AND COMMITTED FRAUD.
MR. FURR: EXCUSE ME. SAME OBJECTION, YOUR HONOR.
MR. BROWN: I DON'T KNOW HOW IT'S MORE CLEAR. I'M TALKING ABOUT WHAT THE EVIDENCE IS GOING TO SHOW.
THE COURT: I'LL ALLOW IT.
MR. BROWN: I'M SORRY?
THE COURT: I'LL ALLOW IT.

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MR. BROWN: THE EVIDENCE WILL SHOW THAT THEY HAVE ACTED MALICIOUSLY AND FRAUDULENTLY.

WITH THAT, I THANK YOU.

THE COURT: JURORS, I'M GOING TO GIVE YOU A REGULAR HOUR AND A HALF LUNCH. IT'S 12 AFTER 12:00, SO I WILL SEE YOU BACK AT QUARTER TO 2:00.

LET ME JUST SAY, IT'S IMPORTANT FOR US ALL TO BE BACK AT QUARTER TO 2:00. I'M GOING TO START AT THAT TIME.

PLEASE CONTINUE TO FOLLOW THE ADMONITION OVER THE NOON HOUR. AS YOU KNOW, IT'S ABSOLUTELY CRITICAL THAT YOU DO SO.

HAVE A GOOD LUNCH, AND WE'LL SEE YOU BACK AT QUARTER TO 2:00.

(LUNCH RECESS TAKEN AT 12:12 P.M.)

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AFTERNOON SESSION 1:50 P.M.

TUESDAY, JANUARY 18, 2000

THE COURT: GOOD AFTERNOON, EVERYBODY. WE ARE BACK ON THE RECORD.

WHO IS GOING NEXT? MR. HARDY?

MR. HARDY: THANK YOU, YOUR HONOR.

GOOD AFTERNOON. I'M GOING TO MAKE THE OPENING STATEMENT FOR PHILIP MORRIS. YOU WON'T HEAR FROM THE OTHER PHILIP MORRIS ATTORNEYS.

I JUST WANTED TO REMIND YOU THAT THEY ARE LUCY MASON, MY PARTNER, AND BEHIND HER OVER THERE IN THE CORNER, GERRY BARRON. AND YOU WILL BE HEARING FROM THEM AS THE CASE GOES ON, BECAUSE THEY'LL PUT SOME EVIDENCE ON TOO FOR PHILIP MORRIS, JUST AS I'M GOING TO DO.

THERE ARE GOING TO BE TWO OPENING STATEMENTS BY TOBACCO DEFENDANTS, MINE FOR PHILIP MORRIS, AND THEN JEFF FURR, WHO IS GOING TO SPEAK TO YOU FOR A FEW MINUTES FOR R.J. REYNOLDS.

AND WE HAVE COOPERATED TO SOME EXTENT. WE HAVE TRIED TO SORT OF SPLIT THE OPENING UP SO YOU DON'T HAVE TO HEAR THE SAME THING TWICE. I THINK WE'LL DO A PRETTY GOOD JOB OF KEEPING THE SEPARATION OF TOPICS.

I KNOW THAT WE ARE ALL BACK NOW, AND YOU HAVE HAD LUNCH. SO YOU HAVE FULL STOMACHS, AND I HAVE TO TRY TO KEEP

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YOU AWAKE, SO I WILL DO MY BEST AT THAT.

I DO HAVE QUITE A BIT OF THINGS TO GO THROUGH AND I'LL TRY TO PACE MYSELF AND NOT GO TOO FAST. I'M NOT GOING TO USE THIS MACHINE MUCH (INDICATING). I WILL TURN IT OFF

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IN A MINUTE, BECAUSE I JUST DON'T LIKE IT. I'M GOING TO USE BOARDS.

BUT LET ME GET RIGHT TO IT. I'M GOING TO GIVE YOU A ROADMAP, OR TRY TO. YOU'RE GOING TO HAVE TO DECIDE IN THIS CASE, AS YOU'VE ALREADY FIGURED OUT, WHETHER LESLIE WHITELEY AND HER HUSBAND LEONARD SHOULD RECEIVE MONEY DAMAGES BECAUSE MRS. WHITELEY CHOSE TO SMOKE CIGARETTES FROM 1972 TO 1998.

MR. BROWN: OBJECTION, YOUR HONOR, AS TO WHAT SHE CHOSE TO DO. IT'S NOT RELEVANT TO THE CLAIM TAKEN OUT OF THE CASE, BECAUSE OF A CLAIM THAT'S TAKEN OUT.

THE COURT: I HAVE ALLOWED YOU EACH A LITTLE BIT OF LEEWAY. LET'S STICK WITH WHAT THE EVIDENCE IS GOING TO SHOW, BUT LET'S GO FORWARD.

MR. HARDY: -- EVIDENCE -- EXCUSE ME -- CIGARETTES WHICH CONTAIN A WARNING ON EVERY PACKAGE.

THERE ARE SOME FACTS IN THIS CASE WHICH, ALTHOUGH NOT NECESSARILY ADMITTED AT THIS POINT, I THINK YOU WILL SEE THERE IS NO EVIDENCE TO THE CONTRARY.

I WANT TO POINT OUT THREE OF THEM TO YOU IN THE FORM OF ONE OF THESE BLOWUPS.

I THINK THE EVIDENCE WILL BE UNCONTROVERTED ESSENTIALLY ON THESE THREE POINTS; THAT LESLIE WHITELEY WAS WARNED OF HEALTH RISKS. I WILL TALK OF THAT MORE LATER.

SECONDLY, THAT NEITHER TOBACCO COMPANY EVER TOLD HER THAT IT WAS SAFE TO SMOKE CIGARETTES, NOT IN ANY WAY, SHAPE OR FORM.

AND FINALLY, SHE HAD THE FREE WILL AND THE

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ABILITY TO QUIT SMOKING. NOW, THAT MAY SEEM OBVIOUS, BECAUSE SHE DID QUIT SMOKING IN FEBRUARY OF 1998. BUT MY POINT HERE IS THAT SHE HAD THE FREE WILL AND THE ABILITY TO QUIT SMOKING AT ANY TIME SHE CHOSE TO DO SO FROM THE TIME SHE STARTED UNTIL SHE DID QUIT.

MS. CHABER TALKED ABOUT THE FACT THAT THE COMPANIES WERE MANIPULATING THE NICOTINE LEVELS TO ADDICT SMOKERS.

AND I THINK THAT THE EVIDENCE WILL BE VERY CLEAR THAT NEITHER COMPANY, ALTHOUGH THEY CERTAINLY HAVE THE ABILITY -- I WILL DISCUSS IT LATER -- TO CHANGE THE AMOUNT OF NICOTINE IN CIGARETTES, THEY DID NOT SECRETLY MANIPULATE NICOTINE TO ADDICT SMOKERS. I WILL PRESENT YOU WITH EVIDENCE IN THIS CASE.

YOU WILL SEE EVIDENCE IN THIS CASE, HOWEVER, THAT

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THERE IS MANIPULATION OF THE MEANING OF THE DOCUMENTS THAT YOU'VE HEARD ABOUT. AND I WANT TO GIVE YOU AN EXAMPLE RIGHT NOW. I'LL JUST DO THIS ONCE, SINCE I HAVE A NUMBER OF OTHER THINGS TO SAY.

BUT YOU REMEMBER YOU WERE SHOWN A DOCUMENT FROM 1964 -- MAYBE IT'S NOT FAIR TO ASK YOU TO REMEMBER THIS. THIS WAS DESCRIBED TO YOU AS A 1964 DOCUMENT BY HELMUT WAKEHAM, HEAD OF RESEARCH AND DEVELOPMENT AT PHILIP MORRIS.

AND THE LAST SENTENCE WAS READ TO YOU:

"OUR PHILOSOPHY IS NOT TO START A WAR. BUT IF WAR COMES, WE AIM TO FIGHT WELL AND TO WIN."

I ASK YOU WHEN THE EVIDENCE COMES IN IN THIS CASE, AS WITH ANY DOCUMENT, TO --

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MR. BROWN: YOUR HONOR, THIS IS ARGUMENT.

THE COURT: SUSTAINED.

MR. HARDY: WE'LL PRESENT EVIDENCE TO YOU OF THE ENTIRE DOCUMENT. AND YOU WILL HAVE AN OPPORTUNITY TO LOOK AT THIS ENTIRE DOCUMENT AND ANY OTHER DOCUMENT THAT COMES IN.

MR. BROWN: YOUR HONOR, THIS IS NOT OPEN STATEMENT. HE IS ARGUING THIS DOCUMENT. IF HE HAS EVIDENCE ABOUT THIS CASE --

THE COURT: WAIT A MINUTE, MR. BROWN. I DON'T PERMIT LAWYERS TO ARGUE IN FRONT OF JURIES IN THE WAY THAT YOU ARE NOW DOING.

JUST STATE YOUR LEGAL GROUNDS AND I'LL RULE.

WHAT ARE YOUR LEGAL GROUNDS?

MR. BROWN: ARGUMENT.

THE COURT: SUSTAINED.

MR. HARDY: THE EVIDENCE WILL BE THAT PHILIP MORRIS, IN 1964 -- PHILIP MORRIS, THROUGH ITS RESEARCH AND DEVELOPMENT DIRECTOR, POINTED OUT IN RESPONSE TO THIS SITUATION:

"YOUR RESEARCH DEPARTMENT HAS MADE A THOROUGH APPRAISAL OF ITS PROGRAM AND HAS MOVED IN SEVERAL DIRECTIONS TO MEET THE CHALLENGE."

MAYBE I'M IN THE WAY.

"FIRST WE HAVE SET UP A TECHNICAL PLANNING AND INFORMATION DIVISION WITHIN WHICH WE WILL HAVE A GROUP PROFICIENT IN THE BIOLOGICAL FIELD. THEIR FUNCTION WILL BE TWOFOLD; ONE, TO STUDY IN DETAIL

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ALL ASPECTS OF THE SMOKING AND HEALTH SITUATION AND, TWO, TO RECOMMEND HOW OUR CHEMICAL, BIOLOGICAL AND PROCESSING STUDIES MAY BE BETTER AIMED AT OUR OBJECTIVES.

AND IT GOES ON AND SAYS THEN -- IN THE NEXT PARAGRAPH, DR. WAKEHAM POINTS OUT THAT THERE ARE CONTINUING PHYSIOLOGICAL OR HEALTH RESEARCH ACTIVITIES IN OUTSIDE LABORATORIES. HE POINTS OUT THE NEED FOR THAT.

HE THEN GOES ON TO SAY:

"WE ARE ENGAGED IN A RESEARCH AND DEVELOPMENT

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

PROGRAM TO DELIVER A CIGARETTE LINE WITH SUPERIOR PHYSIOLOGICAL PERFORMANCE."

AND THAT'S THE DOCUMENT THAT MS. CHABER REFERRED TO ABOUT STARTING A WAR. WHEN YOU SEE THE FULL EVIDENCE, YOU WILL SEE THAT THE WAR IS THE WAR AGAINST HEALTH PROBLEMS FROM CIGARETTE SMOKING.

I THINK -- BY WAY OF THIS ROADMAP THAT I PROMISED, I BELIEVE THAT ALL THE EVIDENCE IN THIS CASE WILL RELATE TO ONE OF FOUR TOPICS, AND WHETHER YOU ARE TAKING NOTES OR JUST MAKING MENTAL COMPARTMENTS IN YOUR HEAD FOR THE EVIDENCE, I THINK, IF YOU KEEP IN MIND THOSE FOUR TOPICS, EVERY BIT OF EVIDENCE THAT COMES IN IN THIS CASE WILL RELATE TO ONE OF THE FOUR OF THEM (INDICATING).

AND THESE ARE THE TOPICS I'M GOING TO TALK ABOUT THIS AFTERNOON FOR A FEW MINUTES (INDICATING), EXCEPT FOR THIS ONE, BECAUSE I THINK I'M GOING TO RUN OUT OF TIME. AND ESSENTIALLY, MR. FURR IS GOING TO DISCUSS PERSONAL CHOICE.

I WANT TO TELL YOU NOW WHAT I MEAN BY EACH OF

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THESE, AND THEN I'LL GO BACK AND WE'LL TALK ABOUT THEM IN A LITTLE MORE DETAIL, FOR THE TIME WE HAVE.

I THINK THAT THE EVIDENCE WILL BE VERY CLEAR THAT PHILIP MORRIS AND R.J. REYNOLDS HAVE RESPONDED IN A FAIR AND AN APPROPRIATE MANNER TO THE LAWSUITS, TO THE REGULATIONS, TO THE SCIENCE ON SMOKING AND HEALTH THAT HAS BEEN GOING ON FOR THE LAST HALF CENTURY, AND THAT INCLUDES SUCH THINGS AS THE REDUCTION OF TAR AND NICOTINE, THE LEVELS OR AMOUNTS OF TAR AND NICOTINE IN CIGARETTES BY 60 TO 70 PERCENT.

NOW, THE COMMENT YOU HEARD FROM PLAINTIFFS' COUNSEL WAS THAT TAR AND NICOTINE REDUCTIONS WERE AN ILLUSION.

YOU WILL LEARN THROUGH THE EVIDENCE THAT REDUCING TAR AND NICOTINE WAS NOT JUST SOME TOBACCO COMPANY IDEA. IT HAS BEEN PROMOTED BY THE FEDERAL GOVERNMENT AND BY EVERY SCIENTIFIC ORGANIZATION THAT HAS SPOKEN ON THE SUBJECT SINCE THE 1950S UP THROUGH THE 1990S.

DR. WYNDER, WHO IS THE PHYSICIAN THAT DID THE MOUSE SKIN-PAINTING STUDIES IN THE 1950S THAT YOU HEARD ABOUT. DR. WYNDER IS THE ONE THAT FIRST SAID, YOU WILL LEARN FROM THE EVIDENCE, "IT WILL BE NICE IF THE TOBACCO COMPANIES TAKE THE TAR LEVELS DOWN ABOUT 40 PERCENT." I THINK ABOUT THE 1950S, '70S, THEY HAD IT DOWN MORE THAN THAT, BY 60 TO 70 PERCENT, AS I SAY.

SO YOU'LL HEAR A LOT OF EVIDENCE ABOUT COMPENSATION. SHE TALKED ABOUT COMPENSATION.

REMEMBER, WE INDEED LEARNED THAT A LOT OF SMOKERS DO COMPENSATE WHEN THEY SWITCH TO LOWER TAR AND NICOTINE

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CIGARETTES. THAT IS GENERALLY TEMPORARY AND PARTIAL, BUT THAT SOME PEOPLE COMPENSATE QUITE A BIT.

AND THERE ARE STILL LOTS OF STUDIES ABOUT IT, AND THERE'S STILL LOTS OF ARGUMENT, AND YOU'LL LEARN FROM THE EVIDENCE ABOUT HOW MUCH LOWERED TAR AND NICOTINE HELPS.

BUT THERE'S NO QUESTION THAT SCIENCE AND GOVERNMENT HAVE WANTED THAT FOR A LONG, LONG TIME, AND STILL DOES.

NOW, THERE WAS A REFERENCE TO THE FACT THAT UNDERAGE SMOKERS ARE SMOKING PHILIP MORRIS CIGARETTES, ESPECIALLY MARLBOROS.

AND THERE IS INDEED NO DOUBT THAT THE COMPANIES KNOW, BOTH PHILIP MORRIS AND R.J. REYNOLDS, THAT PEOPLE UNDER 18 ARE SMOKING THEIR CIGARETTES. NO QUESTION ABOUT THEM KNOWING THAT. I'LL TALK ABOUT THAT A LITTLE BIT MORE IN A FEW MINUTES.

BUT THE POINT IS, THE EVIDENCE WILL BE VERY CLEAR, I THINK, THAT THE COMPANIES DO NOT USE THE KNOWLEDGE THAT UNDERAGE TEENAGERS ARE ILLEGALLY SMOKING THEIR CIGARETTES TO TRY TO SELL THEM THOSE CIGARETTES, TO TRY TO MARKET THOSE CIGARETTES TO THEM. THAT'S NOT PART OF THEIR MARKETING PLAN OR THEIR ADVERTISING PLAN. AND I THINK YOU'LL SEE PRETTY CLEAR EVIDENCE ON THAT.

THERE WILL BE A GOOD DEAL OF EVIDENCE ABOUT NICOTINE. OF COURSE, THERE IS NO DOUBT THAT NICOTINE IS A VERY IMPORTANT PART OF CIGARETTES. SOME PEOPLE THINK IT'S THE MOST IMPORTANT CONSTITUENT IN TOBACCO.

SOME PEOPLE THINK IT'S THE MOST IMPORTANT REASON

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THAT PEOPLE SMOKE. BUT AS I SAID, I THINK THE EVIDENCE WILL BE CLEAR THAT THE COMPANIES DID NOT USE NICOTINE IN A MANIPULATIVE WAY TO TRY TO ADDICT SMOKERS.

ON THE CONTRARY. THEY OFFERED A WIDE RANGE OF TAR AND NICOTINE CIGARETTES TO SMOKERS, TO LET PEOPLE CHOOSE WHAT LEVELS THEY WANT, AND THAT HAS BEEN TRUE FOR DECADES.

AND FURTHER, THOSE TAR AND NICOTINE LEVELS HAVE BEEN REPORTED TO THE FEDERAL TRADE COMMISSION SINCE AT LEAST 1966 OR BEFORE, AND THEY HAVE BEEN SHOWN ON THE ADVERTISING FOR EVERY CIGARETTE, EVERY BRAND, STARTING A YEAR OR TWO BEFORE LESLIE WHITELEY BEGAN TO SMOKE IN EARLY 1971, I BELIEVE.

AND WHILE THE COMPANIES WERE BRINGING THOSE LEVELS DOWN OF TAR AND NICOTINE, SOME OF THE PEOPLE IN SCIENCE OUTSIDE THE COMPANIES, NOTHING TO DO WITH TOBACCO COMPANIES, SOME OF THE SCIENTISTS AND SOME OF THE GOVERNMENT PEOPLE WERE SUGGESTING, "WELL, WHY DON'T YOU JUST GO AHEAD. KEEP TAKING THE TAR DOWN AS FAR AS YOU CAN, BUT BRING THE NICOTINE BACK UP AND MAKE IT MORE OF A MEDIUM LEVEL, SO THAT PEOPLE WHO WANT MORE NICOTINE WILL SMOKE THOSE LOW-TAR CIGARETTES MORE."

THAT WAS ONE SUGGESTION THAT HAS BEEN MADE

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REPEATEDLY BY GOVERNMENT AND SCIENCE, A SUGGESTION THAT IF YOU WANT TO THINK ABOUT, IT AMOUNTS TO SAYING: "WHY DON'T YOU MANIPULATE THE NICOTINE?"

NOW, WE'LL PRESENT YOU THIS EVIDENCE ABOUT EFFORTS TO MAKE A SAFER CIGARETTE, WHICH MR. FURR WILL GO INTO IN MORE DETAIL THAN I INTEND TO, INCLUDING EFFORTS IN

0652

THE '50S AND THE '60S, IN SPITE OF THE FACT THAT NOTHING THAT PHILIP MORRIS DID OR R.J. REYNOLDS DID OR DIDN'T DO HAD ANYTHING TO DO WITH LESLIE WHITELEY STARTING TO SMOKE OR CONTINUING TO SMOKE.

NOW, THE SECOND TOPIC, AWARENESS, REALLY HAS, IF YOU WILL, TWO PARTS. ONE IS SORT OF GENERAL AWARENESS OR COMMON KNOWLEDGE, I'LL CALL IT. THAT IS: WHAT DOES THE MAN ON THE STREET KNOW? WHAT DID PEOPLE THINK ABOUT CIGARETTES, THE DANGERS PRESENTED BY CIGARETTES, THE DIFFICULTY IN QUITTING? THE SORT OF THING THAT MS. CHABER WAS TALKING ABOUT WHEN SHE STARTED BACK WITH KING JAMES AND WORKED FORWARD.

AND THERE'S A SECOND PART TO THE AWARENESS TOPIC OF EVIDENCE. AND OF COURSE, THAT IS: WHAT DID LESLIE WHITELEY KNOW AND WHEN DID SHE KNOW IT?

I THINK THERE WILL BE EVERY REASON TO BELIEVE THAT LESLIE WHITELEY --

MR. BROWN: YOUR HONOR, THAT IS -- OBJECTION. ARGUMENTATIVE.

MR. HARDY: I THINK THE EVIDENCE WILL BE CLEAR -- EXCUSE ME. I THINK THE EVIDENCE WILL BE CLEAR THAT MRS. WHITELEY WAS WARNED AND UNDERSTOOD THE RISKS, THE HEALTH RISKS AND THE DIFFICULTY OF QUITTING.

NOW, YOU MIGHT ASK: WHY ARE THE TOBACCO LAWYERS GOING TO OFFER EVIDENCE ABOUT PEOPLE BELIEVING THAT CIGARETTES CAUSE DISEASE OR HARD TO QUIT BACK IN THE '40S OR THE '30S OR THE '20S?

WELL, THE REASON FOR THAT, THE REASON WE'RE

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OFFERING YOU THAT EVIDENCE --

MR. BROWN: ARGUMENT, YOUR HONOR.

THE COURT: SUSTAINED.

MR. HARDY: ALL RIGHT. THE EVIDENCE WILL SHOW THAT IN THIS CASE, THE PLAINTIFFS ARE CLAIMING THAT THE PUBLIC DID NOT UNDERSTAND THE RISKS AND THAT SOMEHOW THAT LACK OF UNDERSTANDING CARRIED OVER TO A TIME WHEN LESLIE WHITELEY WAS A SMOKER.

AND WE'LL SHOW YOU EVIDENCE THAT THAT ISN'T TRUE, THAT INDEED, THE PUBLIC UNDERSTOOD THE RISKS A LONG TIME BEFORE LESLIE WHITELEY STARTED TO SMOKE.

THE THIRD TOPIC IS CAUSATION. AND THAT AGAIN HAS TWO PARTS. VERY QUICKLY, ONE, OF COURSE, IS: DOES CIGARETTE SMOKING CAUSE LUNG CANCER? AND WHAT ARE OTHER RISKS OF LUNG CANCER?

AND THE SECOND PART IS: CAN THEY PROVE THAT CIGARETTE SMOKING CAUSED LESLIE WHITELEY'S SMALL CELL LUNG

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CANCER?

SHE WAS DIAGNOSED WITH IT IN JUNE OF 1998. JUST SO THERE'S NO MISTAKE, WE ARE NOT ARGUING ABOUT THAT. WE ARE NOT SAYING IT WASN'T LUNG CANCER. WE'RE NOT SAYING THE DIAGNOSIS WAS WRONG.

FINALLY, THE EVIDENCE WILL SHOW THAT SMOKING IS A MATTER OF PERSONAL CHOICE. THE EVIDENCE WILL BE THAT 50 MILLION PEOPLE HAVE QUIT SMOKING, ABOUT HALF THE NUMBER WHO EVER SMOKED, A MILLION AND A HALF PEOPLE A YEAR. THAT THE SMOKING LEVELS HAVE DROPPED FROM 42 PERCENT OF THE POPULATION IN 1964 OR '5 TO LESS THAN 25 PERCENT TODAY.

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DO YOU REMEMBER THAT CHART THAT MS. CHABER SHOWED THAT HAD A RED SECTION LIKE A MOUNTAIN AND THE RED SECTION WAS CIGARETTE SMOKING?

I DON'T KNOW WHETHER YOU NOTICED, BUT IT PEAKED IN ABOUT '64, '65, AND STARTED DOWN. FROM THAT POINT ON -- THERE WERE A COUPLE OF LITTLE BLIPS IN IT, BUT IT KEPT GOING DOWN.

AND THAT'S THE PERCENTAGE OF CIGARETTE SMOKERS IN THE UNITED STATES. AND EVEN THOUGH THE POPULATION HAS BEEN GOING UP RAPIDLY, FOR THE LAST 20 YEARS, THE NUMBER OF CIGARETTES SOLD, THE NUMBER OF CIGARETTES CONSUMED, THE NUMBER OF SMOKERS HAS ALL BEEN GOING DOWN.

NOW, IT IS TRUE THAT IF YOU LOOK JUST AT THAT GROUP OF UNDERAGE SMOKERS, PEOPLE WHO ARE SMOKING ILLEGALLY, THAT THAT HAS NOT BEEN A STEADY DECLINE. AND WHETHER IT'S GOING DOWN OR GOING UP DEPENDS ON WHICH YEAR DURING THESE LAST 35 YOU LOOK AT, BECAUSE IT GOES DOWN FOR A WHILE, THEN IT COMES UP AND GOES DOWN FOR AWHILE.

I DON'T KNOW WHAT IT'S DOING RIGHT NOW. I GUESS THE EVIDENCE WILL SHOW YOU THAT.

THESE FIGURES THAT I'M GIVING YOU, INCIDENTALLY, ARE NOT FOR PEOPLE WHO QUIT SMOKING FOR A LITTLE WHILE AND THEN WENT BACK. THESE ARE FOR PEOPLE WHO QUIT SMOKING AND DIDN'T START AGAIN.

AND THESE ARE NOT TOBACCO COMPANY FIGURES. THESE ARE FIGURES FROM THE CENTER OF DISEASE CONTROL, THE FEDERAL GOVERNMENT.

SO ANYWAY, I HOPE THOSE POINTS WILL BE HELPFUL TO

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YOU IN UNDERSTANDING THE EVIDENCE AS IT COMES IN OR FIGURING OUT WHERE ITS FITS.

AND NOW, I HAVE TO ADMIT THAT THERE REALLY IS ONE OTHER CATEGORY THAT I DIDN'T MENTION BEFORE. IF EVIDENCE

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COMES IN RELATING TO ASBESTOS, I SUPPOSE THAT'S A FIFTH CATEGORY. I'M IGNORING IT ESSENTIALLY, BECAUSE I BELIEVE THE EVIDENCE WILL BE CLEAR, EVEN THOUGH I'M NOT UP HERE TO DEFEND THE ASBESTOS COMPANIES.

I THINK THE EVIDENCE WILL BE CLEAR THAT THIS LAWSUIT IS NOT ABOUT ASBESTOS, AND I DON'T THINK YOU'LL HEAR ANY REAL EVIDENCE THAT ASBESTOS IS RELATED IN ANY WAY TO LESLIE WHITELEY'S DISEASE, EITHER AS A DIRECT CAUSE OR EVEN AS A CONTRIBUTING FACTOR ALONG WITH CIGARETTE SMOKING.

NOW, LET'S SEE. I PROMISED I'D TURN THIS OFF, DIDN'T I (INDICATING ELECTRONIC EQUIPMENT)?

MS. CHABER: IT'S YOUR PROBLEM, IF IT DOESN'T WORK AGAIN.

MR. HARDY: IT'S MR. FURR'S PROBLEM.

MS. CHABER TOLD YOU THAT PHILIP MORRIS AND R.J. REYNOLDS SAID ONE THING TO THE PUBLIC, EXPRESSED ONE ATTITUDE OR VIEW ABOUT CIGARETTE SMOKING AND HEALTH, BUT PRIVATELY OR INTERNALLY, THEY ADMITTED THAT SMOKING CAUSED CANCER AND THAT SMOKING WAS ADDICTIVE OR HARD TO QUIT.

AND I THINK THE EVIDENCE WILL BE VERY DIFFERENT THAN THAT. I THINK THE EVIDENCE YOU WILL SEE IS THAT THE COMPANIES BASICALLY STATED THEIR HONEST BELIEFS OR POSITIONS, WHICH CHANGED OVER THE YEARS, AS YOU'LL SEE FROM THE EVIDENCE.

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WHILE AT THE SAME TIME, INSIDE PEOPLE AT THE COMPANIES, ESPECIALLY THE RESEARCH AND DEVELOPMENT PEOPLE, ASSUMED THE WORST. THEY ESSENTIALLY SAID, "LET'S ASSUME CIGARETTE SMOKING CAUSES LUNG CANCER. WE BETTER FIGURE OUT HOW TO DO SOMETHING ABOUT IT. WE BETTER FIGURE OUT HOW TO GET THE BAD SUBSTANCES OUT."

AND THAT'S WHAT THEY WENT ABOUT DOING. AND WHETHER IT COMES IN THROUGH THE PLAINTIFFS' CASE OR THE DEFENDANTS' CASE, YOU WILL SEE, FOR EXAMPLE, A 1961 MEMORANDUM FROM HELMUT WAKEHAM, WHO WAS THEN HEAD OF R&D AT PHILIP MORRIS, SETTING FORTH A SORT OF A BLUEPRINT, A PLAN FOR RESEARCH AND DEVELOPMENT, A PRETTY NAIVE PLAN, AS A MATTER OF FACT, AS IT TURNS OUT, BUT NONETHELESS, A PLAN SAYING, "I THINK WE CAN MAKE A MEDICALLY ACCEPTABLE CIGARETTE," SAYING, AS WE ALL KNOW, INSIDE AND OUTSIDE THE COMPANIES IN SCIENCE, "THERE ARE CARCINOGENS IN CIGARETTE SMOKE," WHICH HE DEFINED AS ANIMAL CARCINOGENS, THINGS WHICH CAUSE TUMORS ON THE SKINS OF ANIMALS.

HE SAID, "LET'S ASSUME THOSE ARE DANGEROUS TO PEOPLE AND TRY TO GET THEM OUT."

AND I THINK YOU WILL SEE THAT'S WHAT THE COMPANIES, NOT JUST PHILIP MORRIS, BUT THE OTHERS, HAVE BEEN WORKING ON EVER SINCE.

NOW, AS I SAY, IT WAS A RATHER NAIVE THOUGHT BECAUSE, AT THE TIME, IT WAS SOMETHING THAT YOU CAN SEE FROM THE DOCUMENTS THEY THOUGHT COULD BE DONE IN RELATIVELY SHORT ORDER. BUT THE TRUTH IS, THERE STILL IS NO SAFE CIGARETTE ON THE MARKET. AND I DON'T THINK ANYBODY WILL ARGUE TO THE

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CONTRARY.

I THINK THERE WILL BE NO EVIDENCE THAT PHILIP MORRIS OR R.J. REYNOLDS TRIED TO HURT THEIR CUSTOMERS.

HERE IS SOME OTHER, I THINK, ESSENTIALLY UNCONTRADICTED FACTS, AND THEY REQUIRE A LITTLE EXPLANATION, BECAUSE THEY MAY LOOK A LITTLE SILLY.

I SAY, "PHILIP MORRIS AND R.J. REYNOLDS WORKED TO REMOVE SUSPECTS." WHAT I'M TALKING ABOUT THERE IS THIS EFFORT TO TRY TO FIGURE OUT WHAT WAS WRONG, WHAT WAS BAD IN TAR AND TAKE IT OUT. WAS IT ONE THING OR 10 THINGS? WHAT WAS IT (INDICATING)?

AND SECOND, AS I'VE ALREADY TOLD YOU, THEY LOWERED THE TAR AND NICOTINE BY 60 TO 70 PERCENT. THEY SPENT BILLIONS OF DOLLARS TRYING TO MAKE SAFER PRODUCTS. I WON'T GO THROUGH ALL THE DIFFERENT WAYS THEY DID THAT, BECAUSE YOU'LL HEAR THAT LATER.

THIS ONE MAY SEEM OBVIOUS. I SAY, "THEY MADE EVERY IMPORTANT CIGARETTE DESIGN CHANGE." WHY NOT? THEY MADE CIGARETTES.

BUT THE POINT HERE IS THAT THERE WAS A TOBACCO WORKING GROUP. IT CONSISTED OF THE FEDERAL GOVERNMENT, THE NATIONAL CANCER INSTITUTE, WORKING WITH THE TOBACCO COMPANIES FOR 10 YEARS, FROM 1968 TO 1977.

AND DURING THAT TIME PERIOD, THE TOBACCO WORKING GROUP WOULD PERIODICALLY SUGGEST TO THE TOBACCO COMPANIES: "WHY DON'T YOU TRY THIS? WHY DON'T YOU MAKE THIS EFFORT TO MAKE A SAFER CIGARETTE? TRY THIS DESIGN CHANGE."

AND EVERY SINGLE IMPORTANT CHANGE THAT THEY

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SUGGESTED (INDICATING) WAS ALREADY BEING UTILIZED BY THE TOBACCO COMPANIES.

NOT JUST PHILIP MORRIS, BUT THE SCIENTIFIC COMMUNITY, GOVERNMENT. AND I THINK ALL THE COMPANIES THOUGHT IF THEY COULD JUST FIGURE OUT WHAT THE REAL PROBLEM IS, YOU COULD JUST REMOVE IT, TAKE IT OUT EITHER SELECTIVELY OR BY JUST REDUCING EVERYTHING DOWN.

BUT THERE IS STILL, EVEN TODAY, NO CONSENSUS IN THE SCIENCE ABOUT WHAT THE PROBLEM IS OR WHAT THE PROBLEMS ARE. THERE ARE SUSPECTS. AND YOU HEARD ABOUT SOME OF THOSE FROM MS. CHABER.

TOBACCO-SPECIFIC NITROSAMINES, THAT WAS ONE SUBSTANCE. AND THERE ARE SEVERAL KINDS OF THOSE. AND PEOPLE HAVE THOUGHT FOR SOME TIME THAT THAT MIGHT BE PART OF THE PROBLEM.

BENZOPYRENE, WHICH APPEARS IN TOBACCO SMOKE AND DIESEL EXHAUST AND CHARCOAL FOOD, A NUMBER OF OTHER SUBSTANCES, IS CONSIDERED A SUSPECT. AND THAT'S STILL UNDER INVESTIGATION TOO.

THE COMPANIES HAVE TRIED SELECTIVE REDUCTION. THAT WOULD BE WHERE YOU TAKE ONE THING OUT AND LEAVE

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EVERYTHING ELSE THE SAME. THEY'VE TRIED GENERAL REDUCTION, LOWERING TAR AND NICOTINE.

YOU HEARD ABOUT VENTILATION HOLES. EXPANDED TOBACCO IS WHERE YOU PUFF IT. YOU HAVE SORT OF LIKE QUAKER PUFFED WHEAT, SO IT TAKES LESS TOBACCO TO FILL THE CIGARETTE. YOU GET LESS TAR AND NICOTINE THAT WAY.

THERE ARE A VARIETY EFFORTS THAT HAVE BEEN MADE,

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ARE STILL BEING MADE. THE COMPANIES HAVE TRIED WHAT THEY CALL UNCONVENTIONAL CIGARETTES, AND YOU'LL HEAR SOME I THINK PRETTY INTERESTING EVIDENCE ABOUT THAT.

THE PRINCIPLE IS BASICALLY HEATING TOBACCO INSTEAD OF BURNING IT. AND THE IDEA IS THAT, BY NOT RAISING THE TEMPERATURE UP SO HIGH AS YOU GET WHEN YOU BURN TOBACCO, THERE ARE A LOT OF POSSIBLY HARMFUL SUBSTANCES THAT REALLY ARE NOT CREATED IF WHAT YOU DO IS HEAT THE TOBACCO.

R.J. REYNOLDS TRIED PREMIER AND THEN ECLIPSE. I THINK THOSE ARE THE TWO NAMES OF PRODUCTS THAT THEY TEST-MARKETED, WHICH WAS ON A SORT OF A HEATING-THE-TOBACCO PRINCIPLE, AND WHICH THE CONSUMER REJECTED AND WOULD NOT SMOKE.

PHILIP MORRIS HAS ONE IN TEST MARKET RIGHT NOW CALLED ACCORD. PHILIP MORRIS ALSO MADE A CIGARETTE CALLED NEXT, AND TOOK OUT ALL THE NICOTINE.

MS. CHABER REFERRED TO THE FACT THAT DURING THE MANUFACTURING PROCESS, THE COMPANIES TAKE THE NICOTINE OUT AND PUT IT BACK.

I THINK YOU'LL FIND THAT'S NOT TRUE. THERE IS ALWAYS LESS NICOTINE IN THE CIGARETTE THAN THERE IS IN THE TOBACCO WHEN THE MANUFACTURING PROCESS STARTS, BUT IT'S NOT BECAUSE THEY REMOVE IT ALL AND THEN PUT IT BACK. IT'S GRADUALLY REDUCED DURING THE MANUFACTURING PROCESS.

BUT IN THE CASE OF NEXT, THEY TOOK ALL THE NICOTINE OUT AND TEST-MARKETED THEM AND THE SMOKERS DIDN'T ACCEPT IT. AND THE TEST MARKET REPORTS BACK WHERE THEY DIDN'T LIKE THE TEST.

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NOW, IS THAT REALLY BECAUSE OF THE TASTE OR IS THAT BECAUSE THERE WASN'T ANY NICOTINE? OR IS IT A COMBINATION OF THINGS? I DON'T KNOW. THERE WILL BE EVIDENCE THAT PHILIP MORRIS IS STILL LOOKING AT THAT QUESTION OF THE LOW-NICOTINE OR NO-NICOTINE CIGARETTE.

YOU HEARD SOME REFERENCES TO INGREDIENTS. AND BEAR WITH ME FOR A MINUTE. I HAVE TO EXPLAIN SOMETHING TO YOU.

I THINK IT CAN SOMETIMES GET CONFUSING. THERE ARE TWO CATEGORIES OF SUBSTANCES THAT YOU'LL HEAR A LOT ABOUT. IT MAY BE IMPORTANT SOMETIMES TO BE SURE THAT YOU UNDERSTAND WHICH CATEGORY IS BEING TALKED ABOUT.

THERE ARE CONSTITUENTS, AND THERE'S THE SORT OF THING THAT'S IN THE TOBACCO SMOKE WHEN YOU LIGHT THE CIGARETTE AND SMOKE IT, WHAT COMES INTO THE SMOKE OR THE CONSTITUENTS WHEN YOU TAKE A CIGARETTE THAT'S BEEN MADE, WHAT'S IN THAT TOBACCO OR THE CONSTITUENTS.

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THE OTHER CATEGORY IS CALLED BY TWO NAMES, INGREDIENTS OR ADDITIVES. YOU HEARD BOTH THIS MORNING. THEY BOTH MEAN THE SAME THING. THOSE ARE INDEED ADDITIVES OR INGREDIENTS.

WHAT THE TOBACCO COMPANIES ADD TO THE CIGARETTE OR TO THE FILTER OR TO THE PAPER OR TO ALL THREE FOR BASICALLY THREE PURPOSES, FLAVOR, TASTE AND MOISTURIZERS.

YOU'LL HEAR NO EVIDENCE IN THIS CASE THAT INGREDIENTS POSE A HEALTH RISK. I BELIEVE THE SUGGESTION WAS MADE IN OPENING THIS MORNING THAT MAYBE INGREDIENTS DID PRESENT A RISK, BUT I BELIEVE THE EVIDENCE WILL ALL BE THAT

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THERE IS NO SCIENTIFIC SUGGESTION THAT INGREDIENTS OR ADDITIVES POSE A HEALTH RISK.

WE WILL PRESENT EVIDENCE ABOUT THE PROCESSES THAT THE TOBACCO COMPANIES GO THROUGH TO BE SURE THOSE INGREDIENTS OR ADDITIVES ARE NOT CONTRIBUTING TO THE PROBLEM.

AND YOU WILL ALSO LEARN THAT WHAT THE TOBACCO COMPANIES DO IS, THEY SUBMIT A LIST OF INGREDIENTS OR ADDITIVES, FLAVORINGS, TO THE FEDERAL GOVERNMENT, TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, WHICH IN TURN TAKES THAT LIST, TURNING IT OVER TO A BOARD OF FIVE OR SIX TOXICOLOGISTS AND OTHER PHYSICIANS.

AND THOSE PEOPLE LOOK AT THE TOBACCO COMPANY MANUFACTURING PROCESSES AND RECORDS. AND THEY LOOK AT THE LIST OF INGREDIENTS, WHICH INCLUDES THE MAXIMUM AMOUNT USED. INDEED, IT DOES NOT IDENTIFY IT BY BRAND NAME. THAT WOULD BE LIKE GIVING UP THE COCA-COLA FORMULA. BUT IT LISTS ALL THE INGREDIENTS USED AND THE MAXIMUM AMOUNTS.

AND THOSE TOXICOLOGISTS AND OTHER DOCTORS HAVE ISSUED TWO REPORTS, ONE IN 1994 AND ANOTHER ONE TWO YEARS AGO IN 1998. AND THEY SAID THE SAME THING AT THE END, THAT THESE INGREDIENTS AND THE AMOUNTS USED DO NOT PRESENT A DANGER OR A RISK TO HEALTH.

I'M GOING TO TALK A LITTLE BIT NOW ABOUT THE TOBACCO COMPANY RESEARCH COMMITTEE, THE COUNCIL FOR TOBACCO RESEARCH. MS. CHABER REFERRED TO THAT.

IT STARTED AFTER THE PLAZA HOTEL MEETINGS IN NEW YORK WHICH SHE MADE MENTION OF. THEY WEREN'T SECRET

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MEETINGS. THEY WERE REPORTED IN THE NEW YORK TIMES. IN FACT, I THINK ONE OF THE CEO'S EVEN INVITED THE FEDERAL GOVERNMENT TO PARTICIPATE.

BUT THEY HAD THIS MEETING OR MEETINGS AND THEY ANNOUNCED THE FORMATION OF THE TOBACCO INDUSTRY RESEARCH COMMITTEE, WHICH WAS INDEED A PUBLIC RELATIONS EFFORT. THERE IS NO QUESTION ABOUT THE FACT THAT IT WAS PUBLIC RELATIONS.

THE COMPANIES HIRED A PUBLIC RELATIONS ORGANIZATION TO TELL SMOKERS THROUGHOUT THE UNITED STATES: "WE KNOW THAT THERE IS A HEALTH ISSUE AND THIS IS WHAT WE ARE GOING TO DO ABOUT IT."

AND INDEED, THE TOBACCO INDUSTRY RESEARCH

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COMMITTEE HAD A PUBLIC RELATIONS FUNCTION TO REASSURE SMOKERS THROUGHOUT THE UNITED STATES FOR MANY YEARS BEFORE THAT WAS SPLIT OFF AND BECAME AN ENTIRELY SCIENTIFIC ORGANIZATION AS THE COUNCIL FOR TOBACCO RESEARCH.

BUT I THINK, ON THAT POINT, PLAINTIFFS AND DEFENSE COUNSEL ARE LIKE TWO SHIPS PASSING IN THE NIGHT, BECAUSE SHE SAYS THAT WAS A BAD ORGANIZATION OR A BAD THING AND I SAY --

MR. BROWN: ARGUMENTATIVE, YOUR HONOR.

THE COURT: SUSTAINED.

MR. HARDY: -- I THINK IT WAS A GOOD THING.

MR. BROWN: ARGUMENTATIVE, YOUR HONOR.

THE COURT: SUSTAINED.

MR. HARDY: I THINK THE EVIDENCE WILL SHOW THAT THE COUNCIL FOR TOBACCO RESEARCH HAS BEEN ONE OF THE MOST

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IMPORTANT FUND-RAISING AND SUPPORTIVE ORGANIZATIONS FOR SMOKING AND HEALTH IN THE WORLD.

A REFERENCE WAS MADE TO THE SIX-MONTH SEARCH FOR SOMEBODY TO CHAIR THE SCIENTIFIC ADVISORY BOARD. THE MAN THEY FOUND WAS CLARENCE COOK LITTLE, WHO WAS THE PAST PRESIDENT OF THE AMERICAN CANCER SOCIETY OR ITS PREDECESSOR, ONE THE FOREMOST PHYSICIANS AND SCIENTISTS IN THE UNITED STATES.

I KNOW YOU ARE GOING TO SEE MORE OF THE FRANK STATEMENT AND YOU'RE PROBABLY ALREADY THINKING YOU'VE SEEN ENOUGH OF IT.

WHAT I WANT TO DO IS GO OVER IT, JUST AS MS. CHABER DID, AND TELL YOU WHAT I THINK THE EVIDENCE IS GOING TO BE ABOUT THESE VERY SAME POINTS, AS TO WHETHER THE STATEMENTS MADE ARE TRUE OR FALSE WHEN THEY'RE MADE.

JANUARY 4, 1954. SO LOOKING AT THIS DOCUMENT (INDICATING) THAT THE COMPANIES PUT OUT IN 1954, ARE THE STATEMENTS THEY MADE TRUE?

WELL, THEY ARE REPORTING, AS YOU SEE, FIRST ON THE MOUSE SKIN-PAINTING STUDIES. AND THEY GIVE DRS. WYNDER AND GRAHAM, WHO DO THE WORK THEY DO. THEY CALL THEM "DOCTORS OF PROFESSIONAL STANDING."

THEY QUESTION WHETHER THE RESULTS ARE CONCLUSIVE. THEY SAY, "OH, ITS RESULTS ARE INCONCLUSIVE."

AND OF COURSE, THAT'S WHAT DR. WYNDER HIMSELF SAID. AND THEN THEY SAY, "DISTINGUISHED AUTHORITIES POINT OUT."

NOW, LET'S LOOK AT THESE FOUR PARAGRAPHS: "THAT

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MEDICAL RESEARCH OF RECENT YEARS INDICATES THAT MANY -- INDICATES MANY POSSIBLE CAUSES OF LUNG CANCER."

I THINK THERE WILL BE NO EVIDENCE TO THE CONTRARY IN THIS CASE. ABSOLUTELY TRUE IN 1954.

"THAT THERE IS NO AGREEMENT AMONG THE AUTHORITIES REGARDING WHAT THE CAUSE IS."

AGAIN, THIS IS THE BEGINNING OF THE CONTROVERSY. THERE IS NO AGREEMENT AT ALL ABOUT IT.

THIS IS AN INTERESTING STATEMENT, "THAT THERE

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IS NO PROOF THAT CIGARETTE SMOKING IS ONE OF THE CAUSES."

THEY REFERRED TO SOME OF THE EVIDENCE BUT THEY SAY IT'S NOT PROVEN.

I THINK THERE WAS NO -- YOU WILL SEE FROM THE EVIDENCE, THERE WAS NO GOVERNMENT, NO SCIENTIFIC ORGANIZATION IN THE WORLD IN 1954 THAT WAS SAYING, "CIGARETTE SMOKING IS A CAUSE OF LUNG CANCER."

AND THEY QUESTION WHETHER THE STATISTICS THEMSELVES ARE VALID, AS MANY SCIENTISTS WERE DOING AT THAT TIME, NOT JUST TOBACCO COMPANY PEOPLE.

SO THEY GO ON THEN. OH, HERE IS ANOTHER ONE: "WE BELIEVE THE PRODUCTS WE MAKE ARE NOT INJURIOUS TO HEALTH."

WOULD THEY SAY THAT TODAY? NO. BUT IT WAS TRUE WHEN THEY HAD SAID IT. IT WAS HONEST WHEN THEY SAID IT. AND THEY HAD EVERY SCIENTIFIC JUSTIFICATION FOR SAYING THAT AT THE TIME.

AS YOU'LL SEE, THEY CHANGED THEIR MINDS OVER TIME AND AS THE EVIDENCE GREW AND STRENGTHENED.

AND THEY GO ON TO SAY THEY'RE GOING TO DO -- THEY DON'T TALK ABOUT SETTING UP VARIOUS GROUPS OF SCIENTISTS TO GO OUT AND DO THINGS. THEY SAY THEY ARE GOING TO SET UP THIS TOBACCO INDUSTRY RESEARCH COMMITTEE AND IT'S GOING TO HAVE A SCIENTIFIC ADVISORY BOARD.

AND THE IDEA IS THAT THAT BOARD WILL TAKE THE MONEY THAT THE TOBACCO COMPANIES GIVE THEM AND DECIDE WHO GETS THE MONEY, HOW MUCH AND FOR WHAT RESEARCH PROJECTS. IT'S CALLED THE GRANT PROGRAM.

I THINK THE EVIDENCE WILL BE THAT THE COMPANIES DID WHAT THEY SAID THEY WERE GOING TO DO WITH THE COUNCIL FOR TOBACCO RESEARCH.

NOW, I KNOW YOU HAVE BEEN TOLD SEVERAL TIMES, BUT WE DO HAVE TO WAIT UNTIL THE PLAINTIFFS ARE THROUGH BEFORE WE CAN PUT OUR EVIDENCE ON. I ASK YOU TO BE PATIENT IN THAT REGARD.

I DON'T HAVE TIME NOW TO TRY TO RESPOND TO EVERY CHALLENGE OR CLAIM OR STATEMENT THAT PLAINTIFFS' COUNSEL MADE IN THEIR OPENING, BUT I DO WANT TO ADDRESS A COUPLE OF THEM.

AND FIRST, BECAUSE I THINK IT'S IMPORTANT IN THIS CASE, YOUTH MARKETING. MS. CHABER SUGGESTED IN OPENING THAT PHILIP MORRIS MARKETED TO YOUTH. AND I THINK THAT LESLIE WHITELEY SHE SAID STARTED SMOKING BECAUSE OF THAT OR PARTLY BECAUSE OF IT.

I BELIEVE THAT YOU'LL SEE FROM THE EVIDENCE THAT LESLIE WHITELEY STARTED SMOKING FOR THE SAME REASON OTHER PEOPLE START SMOKING, INCLUDING ESPECIALLY UNDERAGE

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TEENAGERS, PEER PRESSURE, THE INFLUENCE OF HER FRIENDS, SMOKING ADULTS. SHE TOLD HER ATTORNEY THAT IN HER DEPOSITION. YOU'VE HAD A DEPOSITION EXPLAINED TO YOU BY JUDGE MUNTER.

AND WHEN MS. CHABER ASKED HER CLIENT WHY SHE STARTED SMOKING, SHE SAID, THE RITE OF PASSAGE THE KIDS GO THROUGH AND BECAUSE OF CURIOSITY. SHE SAID SHE HAD SEEN ADULTS SMOKE.

AND YOU HEARD SOME REFERENCES BY MR. BROWN ABOUT THOSE SORTS OF THINGS, HEARING ABOUT HER PARENTS SMOKING, HER OLDER BROTHER WHO SMOKED, HER OLDER SISTER WHO SMOKED, HER GRANDMOTHER SMOKED AND COUGHED. SHE SAW THAT. SHE THOUGHT THE COUGH WAS CAUSED BY THE CIGARETTE SMOKING. SHE HAD AUNTS AND UNCLES WHO SMOKED.

NOW, DID ADVERTISEMENTS HAVE ANYTHING TO DO WITH LESLIE WHITELEY STARTING TO SMOKE? WELL, WHEN THEY DO POLLS OR SURVEYS OF WHY PEOPLE START TO SMOKE AND ASK PEOPLE WHY THEY STARTED TO SMOKE AS TEENAGERS, THEY DON'T SAY "ADVERTISING." THEY SAY THE SAME THINGS THAT LESLIE WHITELEY SAID: RITE OF PASSAGE, PEER PRESSURE, TRYING TO ACT LIKE AN ADULT.

I THINK IT WILL BE CLEAR THAT PHILIP MORRIS AND R.J. REYNOLDS RECOGNIZE THAT PEOPLE UNDER 18 SHOULD NOT HAVE THE RIGHT TO DECIDE WHETHER TO SMOKE, BECAUSE SO MANY PEOPLE AT 13 OR 15 OR 17 ARE TOO IMMATURE TO MAKE WHAT YOU'D CALL AN INFORMED DECISION.

AND SO IT'S NOT JUST ILLEGAL TO SELL CIGARETTES TO MINORS, PEOPLE UNDER 18. IT'S WRONG.

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NOW, INDEED, THE COMPANIES KNOW NOW, AND I THINK THEY KNEW WHEN LESLIE WHITELEY STARTED SMOKING, SOME THINGS ABOUT THE SMOKING HABITS OF UNDERAGE SMOKERS. SPECIFICALLY, PHILIP MORRIS KNEW THAT MORE UNDERAGE SMOKERS WERE SMOKING MARLBOROS THAN ANY OTHER BRAND, JUST AS MORE PEOPLE AT EVERY AGE LEVEL WERE SMOKING MARLBOROS THAN ANY OTHER BRAND.

BUT THEY DIDN'T MARKET THEIR CIGARETTES TO LESLIE WHITELEY OR ANYBODY ELSE UNDER 18 IN 1972 OR AT ANY POINT SINCE THEN.

NOW, THERE WAS A REFERENCE MADE TO THE FACT THAT WE STUDIED 12 TO 17-YEAR-OLDS TO SEE WHAT THEIR SMOKING HABITS WERE, AND THERE'S SOME DEGREE OF TRUTH TO THAT.

BUT LET ME POINT OUT, THE EVIDENCE WILL SHOW THAT IN 1965, FOR INSTANCE, IN CALIFORNIA, IN BERKELEY, THE PUBLIC HEALTH SERVICE OF THE STATE OF CALIFORNIA STUDIED THE SMOKING HABITS OF 12 TO 17-YEAR-OLDS IN JUNIOR HIGH AND SENIOR HIGH. AND IN 1968 AND IN 1970, THE DEPARTMENT OF HEALTH EDUCATION AND WELFARE STUDIED THE SMOKING HABITS OF 12 TO 17-YEAR-OLDS.

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AND WHAT PHILIP MORRIS WAS DOING IN 1973 IS LOOKING AT SOME OF THE STUDIES THAT OTHER ORGANIZATIONS HAD DONE, INCLUDING NATIONAL TRACKING STUDIES, TO SEE WHAT THE SMOKING HABITS WERE OF PEOPLE WHO SHOULDN'T BE SMOKING.

I CAN'T STAND HERE AND TELL YOU THAT THERE WON'T BE SOME EVIDENCE AT SOME POINT IN THIS CASE OF DOCUMENTS FROM ONE COMPANY TO THE OTHER THAT DON'T CONTAIN SOME WHACKO INAPPROPRIATE IDEA OR STATEMENT, BUT I THINK WHEN YOU LOOK AT THE WHOLE DOCUMENT, WHEN YOU SEE THE EVIDENCE, I BELIEVE

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THE EVIDENCE WILL SHOW THAT WHAT THE COMPANIES DID IS OPPOSED TO SOME IDEA THAT SOMEBODY HAD AT SOME POINT.

I THINK THAT YOU'LL SEE WHAT THE COMPANIES DID WAS FAIR AND REASONABLE UNDER THE CIRCUMSTANCES. AND BY "UNDER THE CIRCUMSTANCES," I REMIND YOU THAT, SINCE 1954, THERE HAS NOT BEEN A MOMENT WHEN THERE WEREN'T PERSONAL INJURY LAWSUITS PENDING AGAINST THE COMPANY RIGHT UP TO TODAY. PEOPLE CLAIMING INJURY FROM SMOKING CIGARETTES. THOSE HAVE BEEN AROUND FOR THE LAST 50 YEARS, OR 46 YEARS OR WHATEVER IT IS.

AND GOVERNMENT REGULATION HAS BEEN GOING ON ALL DURING THAT TIME PERIOD. AND THERE HAVE BEEN ALL KINDS OF EFFORTS AT DIFFERENT LEVELS TO REGULATE CIGARETTES.

IT HAS BEEN AN INDUSTRY UNDER ATTACK AND UNDER SIEGE FOR ALL THAT TIME. I THINK YOU HAVE TO REMEMBER THAT WHEN YOU SEE THE KINDS OF REACTIONS THAT YOU GET FROM PEOPLE.

NOW, I'M THROUGH WITH THAT FIRST TOPIC ABOUT THE COMPANIES' RESPONSES TO HEALTH CONCERNS. I WILL GO QUICKER ON THE NEXT TWO, AND THEN I WILL BE THROUGH.

I ASKED YOU THE OTHER DAY DURING JURY SELECTION IF ANYBODY KNEW PATTY ZAPPARELLI. SHE IS HERE NOW. WOULD YOU STAND UP, MS. ZAPPARELLI. STAND UP.

THE COURT EXPLAINED TO YOU, I THINK, JUST AS MR. AND MRS. WHITELEY ARE ENTITLED TO BE HERE AS PLAINTIFFS, SO THE DEFENDANTS ARE ENTITLED TO HAVE A COMPANY REPRESENTATIVE.

AND MS. ZAPPARELLI IS THE UNIT MANAGER FOR PHILIP

0669

MORRIS. I INTRODUCED HER TO YOU BECAUSE YOU ARE NOT SUPPOSED TO TALK TO HER ANYMORE THAN YOU ARE TO ME OR THE OTHER LAWYERS OR PARTIES. SO IF YOU SEE HER IN THE HALL OR ELEVATOR, YOU'LL UNDERSTAND SHE IS NOT BEING RUDE.

I WANT TO MOVE NOW TO THE AWARENESS TOPIC. AND MUCH OF THAT EVIDENCE WILL CONCERN THIS TIME PERIOD BOTH BEFORE MS. WHITELEY WAS A CIGARETTE SMOKER AND EVEN BEFORE SHE WAS BORN.

BUT FIRST, I WANT TO LOOK AT THE QUESTION: WHAT WAS THERE FOR HER TO SEE? WHAT DID SHE KNOW AS A SMOKER?

IN PREPARING FOR THIS TRIAL, PLAINTIFFS'

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COUNSEL TOOK HER CLIENT'S DEPOSITION, AS I SAID. AND SHE ASKED MS. WHITELEY SOME QUESTIONS, AND MS. WHITELEY ANSWERED THOSE QUESTIONS UNDER OATH.

AND WHETHER SHE TESTIFIES IN PERSON AT THIS TRIAL OR BY DEPOSITION, EITHER WAY, YOU WILL STILL HEAR THIS EVIDENCE UNDER OATH.

SHE INDICATED, AS I THINK HER LAWYERS HAVE ALREADY TOLD YOU, THAT SHE HAD STARTED TO SMOKE, FIRST MARLBORO IN ABOUT 1972, AND CAMEL NONFILTERED CIGARETTES. AND THEN, IN ABOUT 1980 OR '81 OR '82, SHE SWITCHED OVER TO CAMEL LIGHTS, AND THEN TO CAMEL LIGHTS 100S.

AND I THINK YOU'LL SEE FROM THE EVIDENCE, SPECIFICALLY MEDICAL RECORDS, THAT ESSENTIALLY FROM THE TIME THAT SHE STARTED SMOKING THE CAMEL CIGARETTES IN THE '80S RIGHT UP TO TODAY, OR RIGHT UP TO FEBRUARY OF '98, WHEN SHE QUIT, HER SMOKING AMOUNT DID NOT GO UP. IT WAS IN THE PACK TO PACK AND A HALF RANGE ALL DURING THAT TIME.

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THERE'S BEEN SOME SUGGESTION THAT THE RATE WENT UP. IT MAY SOUND LIKE I'M SPLITTING HAIRS, BUT THE REASON I'M MAKING THIS POINT IS BECAUSE ONE OF THE ARGUMENTS THAT SOMETIMES IS MADE ABOUT WHETHER A PERSON IS HABITUATED DEPENDS UPON --

MR. BROWN: OBJECTION.

THE COURT: IT IS THE WAY YOU RAISED IT. YOU CAN REPHRASE IT.

MR. HARDY: THE EVIDENCE WILL BE THAT ONE OF THE ELEMENTS OF DEPENDENCY OR HABITUATION OR ADDICTION IS TENDENCY TO INCREASE THE DOSE. IT'S PRETTY WELL-KNOWN IN THINGS LIKE HEROIN AND CRACK COCAINE, BUT WITH CIGARETTES, THE IDEA IS THAT PEOPLE GRADUALLY SMOKE MORE.

WHETHER THAT'S TRUE OR NOT OF SOME PEOPLE, MY POINT IS, WHAT YOU WILL SEE FROM THE EVIDENCE IN THIS CASE, IT'S NOT TRUE OF LESLIE WHITELEY.

BUT IN ANY EVENT, BECAUSE OF THIS DEPOSITION, THAT'S HOW WE KNOW WHAT HER SMOKING BACKGROUND WAS, THAT COUPLED WITH THE MEDICAL RECORDS.

AND THE EVIDENCE WILL ALSO BE CLEAR AND UNCONTRADICTED THAT LESLIE WHITELEY NEVER PICKED UP A PACKAGE OF TOBACCO CIGARETTES AS A SMOKER THAT DIDN'T HAVE A WARNING ON THE PACKAGE.

AND I WANT TO SHOW YOU THE WARNING THAT WAS ON THE PACKAGE WHEN SHE STARTED SMOKING. THIS WAS ACTUALLY THE SECOND WARNING THAT WAS REQUIRED (INDICATING), BUT IT WAS ON THE PACKAGE BEFORE SHE STARTED TO SMOKE. "WARNING: THE SURGEON GENERAL HAS DETERMINED THAT CIGARETTE SMOKING IS

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DANGEROUS TO YOUR HEALTH." THIS WARNING WENT ON ALL PACKAGES BY FEDERAL LAW IN 1970.

SO THAT FROM 1972 WHEN SHE STARTED UNTIL 1984 OR

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'85, WHEN THE WARNING CHANGED, EVERY TIME LESLIE WHITELEY TOOK A CIGARETTE OUT OF A PACK, THAT IS WHAT IT SAID ON THE PACK.

AND YOU'LL HEAR NO EVIDENCE -- THERE WILL BE NO SUGGESTION IN THIS CASE THAT THAT WARNING SHOULD HAVE SAID SOMETHING MORE OR BEEN DIFFERENT IN ANY WAY.

MR. BROWN: OBJECTION. WE DISCUSSED THAT.

THE COURT: OVERRULED.

MR. HARDY: THE FEDERAL GOVERNMENT SAID WHAT THE WARNING HAD TO SAY. IT SPECIFIED THE EXACT WORDING, THE SIZE, WHERE IT GOES ON THE PACK, WHICH IS THE SIDE, AND WHAT KIND OF PRINT IS USED.

AND THERE WILL BE NO SUGGESTION OR NO EVIDENCE IN THIS CASE THAT EITHER PHILIP MORRIS OR R.J. REYNOLDS EVER FAILED TO COMPLY WITH THE LAW IN PUTTING THIS WARNING ON THE PACKAGE.

THEN IN '84, THE FEDERAL GOVERNMENT CHANGED ITS MIND AND SAID THEY WANTED TO HAVE ROTATING WARNINGS ON CIGARETTE PACKAGES.

AND SO IN 1985, THESE WARNINGS WENT ON THE PACKAGE (INDICATING). THERE ARE BY LAW, AS I SAY, ROTATING WARNINGS, AND THOSE ARE THE WARNINGS THAT ARE ON THERE TODAY. THOSE ARE THE WARNINGS THAT WERE ON EVERY PACK OF CIGARETTES FROM WHICH LESLIE WHITELEY TOOK A CIGARETTE FROM 1985 UNTIL SHE QUIT IN FEBRUARY OF 1998.

0672

BUT BECAUSE THEY WERE ROTATING, SOMETIMES THE WARNING WOULD SAY: "SURGEON GENERAL'S WARNING: SMOKING CAUSES LUNG CANCER, HEART DISEASE, EMPHYSEMA AND MAY COMPLICATE PREGNANCY."

AND AT OTHER TIMES, JUST LIKE TODAY, THE WARNING WOULD SAY: "SURGEON GENERAL'S WARNING: QUITTING SMOKING NOW GREATLY REDUCES SERIOUS RISKS TO YOUR HEALTH."

AND THE COMPANIES ARE REQUIRED TO USE ALL FOUR OF THOSE WARNINGS, BUT NEVER MORE THAN ONE AT A TIME. THEY JUST ROTATE.

THERE WILL BE NO EVIDENCE, THERE WILL BE NO SUGGESTION IN THIS CASE THAT THOSE WARNINGS SHOULD HAVE SAID ANYTHING DIFFERENT OR ANYTHING MORE.

AND THERE WILL BE NO SUGGESTION THAT EITHER PHILIP MORRIS OR R.J. REYNOLDS EVER FAILED TO COMPLY WITH THE LAW IN PUTTING THOSE WARNINGS ON THE PACKAGES.

WHAT DOES LESLIE WHITELEY SAY ABOUT THESE WARNINGS? WELL, SHE SAYS FOR THE FIRST 16 YEARS THAT SHE SMOKED, FROM 1972 TO 1988, SHE DIDN'T SEE THEM.

SHE SAYS THAT IN 1988, WHEN SHE WAS PREGNANT WITH HER FIRST SON, TROY, SHE FIRST SAW A WARNING ON THE PACKAGE. SHE TOLD HER ATTORNEY THAT WHEN SHE SAW THE WARNINGS ON THE PACKAGE IN 1988, SHE DIDN'T BELIEVE IT.

AND THE EVIDENCE WILL BE THAT MS. CHABER ASKED LESLIE WHITELEY:

"WHEN DID YOU LEARN THAT CIGARETTES WOULD CAUSE

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

SOMETHING MORE SERIOUS THAN A COUGH IN AN OLDER PERSON OR YOU NOT RUNNING AS FAST?"

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AND SHE SAID: "THE DAY THE DOCTOR TOLD ME I HAD LUNG CANCER." THAT WOULD BE JUNE OF 1998.

SHE WAS ASKED: "UP UNTIL THEN, WHAT HAD YOU BELIEVED?"

AND SHE SAID THAT "IT CAUSED LOW BIRTH WEIGHT AND POSSIBLE CRIB DEATH IN CHILDREN." AND MRS. WHITELEY SAID SHE HAD READ THAT IN A BABY MAGAZINE.

SO THAT'S THE EVIDENCE THAT YOU'LL HEAR ABOUT LESLIE WHITELEY'S AWARENESS AND ATTITUDE ABOUT WARNINGS ON CIGARETTE PACKAGES, AND WARNINGS ON EVERY PACK, ABOUT WHICH THERE WILL BE NO SUGGESTION THAT THERE SHOULD BE SOMETHING MORE OR DIFFERENT, WARNINGS THAT SHE IN FACT DENIES SEEING.

MR. BROWN: YOUR HONOR, HE'S GOING INTO RULINGS THAT --

THE COURT: OVERRULED.

MR. HARDY: WARNINGS. THAT SHE DENIES SEEING FOR 16 YEARS WARNINGS. SHE SAYS SHE DIDN'T BELIEVE THEM WHEN SHE SAW THEM.

AND I THINK THE WITNESSES IN THIS CASE WILL TELL YOU THAT THERE IS A VERY BASIC REASON WHY LESLIE WHITELEY TALKS ABOUT NOT SEEING OR BELIEVING WARNINGS. THAT'S BECAUSE SHE LIKES CIGARETTE SMOKING AND SHE WANTED TO KEEP DOING IT.

NOW, WHAT OTHER EVIDENCE WILL YOU HEAR ABOUT LESLIE WHITELEY'S AWARENESS?

ONE THING YOU LEARNED THAT HER DOCTOR, SEVERAL OF THEM, TOLD HER REPEATEDLY TO STOP SMOKING, INCLUDING WHEN SHE WAS PREGNANT AND GOING TO SEE HER DOCTOR.

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MR. BROWN HAS ACTUALLY ALREADY TOLD YOU SOME OF THE EVIDENCE ABOUT WHAT CAME TO HER ATTENTION LIVING IN SOUTHERN CALIFORNIA, AND I WON'T REPEAT IT, BUT I'LL ADD TO IT A LITTLE BIT, BECAUSE INDEED, LEONARD WHITELEY'S DEPOSITION WAS ALSO TAKEN.

HE'S A YEAR OLDER THAN HIS WIFE. THEY GREW UP IN THE SAME AREA. THEY WENT TO THE SAME MIDDLE SCHOOL TOGETHER. AND LESLIE WHITELEY REMEMBERS -- EXCUSE ME -- LEONARD WHITELEY REMEMBERS SEEING THOSE WARNINGS ON THE PACKAGES WHEN HE WAS IN JUNIOR HIGH, AND HE REMEMBERS CIGARETTES BEING CALLED CANCER STICKS AND COFFIN NAILS DURING THAT TIME PERIOD.

SO THAT'S KIND OF A SKETCH THEN OF WHAT LESLIE WHITELEY KNEW AND WHAT THE EVIDENCE WILL BE ABOUT IT.

AND I WANT TO TURN NOW TO THIS PERIOD OF TIME BEFORE SHE WAS A SMOKER, AND IN FACT EVEN BEFORE SHE WAS BORN.

AND I'LL OUTLINE SORT OF WHAT THE COMMON KNOWLEDGE WAS, AS I CALL IT, AMONG AMERICAN PEOPLE, SMOKERS AND NONSMOKERS, AND ALSO THE DEVELOPMENT OF SOME SCIENTIFIC

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

KNOWLEDGE AND REGULATION BY THE GOVERNMENT. IT WON'T TAKE AS LONG AS IT SOUNDS LIKE IT WILL TAKE.

AND I'M DOING IT, AS I SAID, BECAUSE THE PLAINTIFF HAS CONTENDED THAT LESLIE WHITELEY AND OTHER PEOPLE DIDN'T UNDERSTAND BACK IN THIS EARLIER PERIOD, AND THAT SOMEHOW THE COMPANIES BEHAVED IN A WAY THAT FOOLED THEM OR TRICKED THEM OR DECEIVED THEM AND THAT SPREAD OVER INTO A TIME WHEN LESLIE WHITELEY WAS A SMOKER.

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SO I'LL PRESENT THIS EVIDENCE TO YOU, AND SO WILL THE OTHER ATTORNEYS AS THE TRIAL GOES ON, SO YOU CAN, AS A TRIER OF FACT, DECIDE --

MR. BROWN: YOUR HONOR, THIS IS ARGUMENT.

THE COURT: IT IS. WHY YOU ARE PRESENTING EVIDENCE IS ARGUMENT. YOU NEED TO LIMIT YOURSELF TO WHAT THE EVIDENCE IS GOING TO BE.

MR. HARDY: THANK YOU, YOUR HONOR.

WE'LL PRESENT TO YOU EVIDENCE THAT, IN FACT, THE COMPANIES DID NOT DECEIVE OR FOOL THE PUBLIC OR LESLIE WHITELEY.

THE CONTROVERSY, AS YOU WILL SEE FROM THE EVIDENCE, DID NOT JUST START IN THE 1990S OR '80S OR EVEN THE '50S. IT GOES BACK A LONG TIME.

MS. CHABER TOLD YOU A LITTLE BIT ABOUT THAT. AFTER CIGARETTES BECAME POPULAR, THEY CAME UNDER ATTACK. AND THEY WERE CALLED "COFFIN NAILS," "CANCER STICKS." THOSE TERMS ARE MORE THAN 100 YEARS OLD.

AND OTHER TERMS, LIKE "NICOTINE CRAVINGS" AND "NICOTINE FITS" BECAME COMMON IN THE UNITED STATES AFTER CIGARETTES WERE MASS MANUFACTURED. PEOPLE WOULD MAKE JOKES ABOUT HAVING A NICOTINE FIT IF THEY COULDN'T GET A CIGARETTE. IT BECAME SUCH A PART OF SORT OF FOLKLORE AND COMMON KNOWLEDGE AMONG PEOPLE LONG BEFORE THERE WERE ANY WARNINGS ON PACKAGES THAT IT BECAME EMBEDDED IN THE COUNTRY'S HUMOR, IN SONGS AND CARTOONS AND JOKES.

BUT SOME PEOPLE WERE VERY SERIOUS ABOUT IT AT THE SAME TIME. BETWEEN THE 1890S AND THE 1920S, 16 STATES

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BANNED THE SALE OF CIGARETTES AS SORT OF A MINIPROHIBITION, IF YOU WILL, BEFORE THE FEDERAL PROHIBITION ON ALCOHOL. THERE WERE 16 STATES FOR 20 TO 30 YEARS WHERE YOU COULD NOT BUY OR SELL CIGARETTES. THOSE STATES, AND PRACTICALLY ALL THE OTHERS DURING THE SAME TIME PERIOD BEGAN ENACTING LAWS THAT REQUIRED THAT CERTAIN MATTERS ABOUT SMOKING AND HEALTH, RISKS OF DISEASE, DIFFICULTY IN QUITTING BE TAUGHT IN THE PUBLIC SCHOOLS.

WHEN THE LAWS CHANGED ON THE BOOKS AND THE 16 STATES GRADUALLY MADE CIGARETTES A LEGAL PRODUCT AGAIN, THEY DID NOT DROP THESE REQUIREMENTS ABOUT TEACHING THE DANGERS OF SMOKING IN THE PUBLIC SCHOOL SYSTEM.

THERE WERE, IN THE EARLY PART OF THE 20TH CENTURY, A NUMBER OF COMPANIES THAT WE HAVE THAT WOULD NOT

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HIRE CIGARETTE SMOKERS; STANDARD OIL, HENRY FORD, INTERNATIONAL HARVESTER, MONTGOMERY WARD. THEY WOULDN'T HIRE A PERSON THAT SMOKED CIGARETTES.

PEOPLE IN CONGRESS TALKED ABOUT REGULATING CIGARETTES AT LEAST AS FAR BACK AS THE 1920S, WHEN A SENATOR SAID HE WANTED TO REGULATE CIGARETTES BECAUSE HE THOUGHT THEY WERE ADDICTIVE.

AND LUCY PAGE GASTON RAN FOR PRESIDENT OF THE UNITED STATES IN THE 1920S ON AN ANTI-SMOKING PLATFORM.

NOW, THAT TAKES US REALLY UP THROUGH THE '40S, I THINK, WHEN THERE REALLY WASN'T MUCH SCIENCE ON IT, JUST SORT OF AN ATTITUDE OF THE PEOPLE WITHOUT WHAT YOU'D CALL REALLY SCIENTIFIC SUPPORT.

BUT IN 1950, ERNEST WYNDER AND EVARTS GRAHAM IN

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THIS COUNTRY, AND A DOCTOR NAMED DOLL IN ENGLAND, DID WHAT WERE CALLED RETROSPECTIVE STUDIES. THEY LOOKED BACK AT POPULATIONS OF PEOPLE, SMOKERS AND NONSMOKERS, TO SEE IF THERE WAS A DIFFERENCE IN THE LUNG CANCER RATES.

AND THEY LEARNED THAT SMOKERS WERE GETTING A LOT MORE LUNG CANCER THAN NONSMOKERS. THEY DIDN'T SAY THAT THAT MEANT SMOKING WAS A CAUSE OF LUNG CANCER, BUT THEY THOUGHT THERE WAS AN ASSOCIATION, THAT IT MIGHT BE A CAUSE. AND THEN, IN 1953, THE MOUSE SKIN-PAINTING STUDIES WERE DONE.

I WANT TO TELL YOU JUST A LITTLE BIT MORE ABOUT THOSE. HERE IS WHAT THEY DID. THEY CONDENSED, MEANING THEY REDUCED THE TEMPERATURE OF TOBACCO SMOKE, BROUGHT IT DOWN SO LOW THAT THEY MADE A KIND OF A WHAT'S CALLED TAR. IT'S A BROWN, STICKY SUBSTANCE.

THEY TOOK THESE MICE THAT HAD BEEN SPECIALLY BRED TO GET SKIN TUMORS. THEY SHAVED THE FUR OFF THE BACKS OF THE MICE, AND THEN THEY PAINTED THE TAR ON THE SKIN OF THE MICE AT THE LEVEL OF BETWEEN 600 AND 1,000 CIGARETTES A DAY.

THEY GOT SOME SKIN TUMORS ON THE MICE. AND THERE WAS A GREAT HUE AND CRY IN THE COMMUNITY IN THE SCIENTIFIC COMMUNITY ABOUT THIS. SOME PEOPLE THOUGHT THAT THAT WAS MEANINGLESS, BECAUSE OF THE AMOUNT OF TAR, BUT IT TURNS OUT THAT'S A GOOD TOOL FOR STUDYING TOBACCO TAR.

DR. WYNDER, AT THE TIME THAT HE DID THE WORK, ACKNOWLEDGED THAT THIS WAS NOT PROOF THAT CIGARETTE SMOKING CAUSED LUNG CANCER, BUT THAT IT WAS AN IMPORTANT TOOL TO USE.

AND THAT REALLY KICKED OFF THE SCIENTIFIC

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STUDIES, AND IT ALSO KICKED OFF THE ARTICLES IN THE NEWSPAPERS AND IN ALL THE COMMON PRESS ABOUT SMOKING AND HEALTH ISSUES.

IT ALSO MARKED SORT OF THE BEGINNING OF GOVERNMENT REGULATION. AND I WANT TO SHOW YOU SORT OF A SCARY CHART, BUT I'LL GO THROUGH IT REAL QUICKLY.

THIS DOES NOT PURPORT TO BE EVERYTHING THAT HAPPENED FROM A GOVERNMENT STANDPOINT DURING THE TIME

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PERIOD I'M SHOWING YOU (INDICATING). THESE ARE REFERENCES TO SOME OF THE THINGS THAT WERE MOST HIGHLY PUBLICIZED IN THE WAY OF GOVERNMENT REGULATION FROM 1955 TO 1988. THIS IS A SELECTION BY ME OF THINGS THAT WERE IN THE PRESS OVER THIS PERIOD OF TIME.

AND THEY START OFF WITH THE FEDERAL TRADE COMMISSION ISSUING ADVERTISING GUIDELINES SAYING, "YOU CAN'T MAKE ANY HEALTH CLAIMS." AND I'LL SKIP SOME OF THESE THINGS.

IN 1959, THE FEDERAL TRADE COMMISSION SAID TO THE TOBACCO COMPANIES, "IF YOU DISCLOSE WHAT THE TAR AND NICOTINE LEVEL IS IN YOUR CIGARETTES, THAT'S A HEALTH CLAIM."

AND SO THE NEXT MONTH, THEY SAID, "YOU CAN'T DO THAT. YOU CAN'T TELL PEOPLE WHAT THE TAR AND NICOTINE LEVEL IS IN YOUR CIGARETTES."

THEN, KENNEDY, TWO YEARS LATER, CALLED FOR THE SURGEON GENERAL REVIEW. AND YOU HEARD ALREADY ABOUT THE FAMOUS REPORT IN '64, THE FIRST OF MANY, MAKING THE JUDGMENT THAT CIGARETTE SMOKING CAUSES LUNG CANCER IN MEN, AND

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INDEED, THINKING THAT THAT WAS PROBABLY GOING TO PROVE TO BE TRUE WITH WOMEN.

THERE WERE HEARINGS IN '65 BY CONGRESS TO DECIDE ABOUT THE LABELING. AND AS OF JANUARY 1, 1966, THE FIRST LABELING WAS REQUIRED. THIS IS IT (INDICATING). THIS IS THE FIRST ONE THAT WENT ON.

IT WAS THERE FROM '66, WHEN LESLIE WAS SIX AND A HALF YEARS OLD, UNTIL 1970. AND THEN IT CHANGED. THAT SECOND ONE THAT I SHOWED YOU EARLIER.

AND IN MARCH OF '66, THE FEDERAL TRADE COMMISSION SAID, "YOU KNOW, WE CHANGED OUR MIND. INSTEAD OF SAYING YOU CAN'T ADVERTISE TAR AND NICOTINE LEVELS IN CIGARETTES, WE ARE GOING TO SAY YOU CAN IF YOU WANT TO. WE ARE GOING TO SET UP A LABORATORY. WE'RE GOING TO STUDY BY MACHINE SMOKING YOUR CIGARETTES, WHAT THE DELIVERY OF TAR AND NICOTINE IS."

THEN THE TOBACCO WORKING GROUP WAS FORMED. AND THAT WAS THE GOVERNMENT WORKING WITH THE COMPANIES TO TRY TO DEVELOP A LESS HAZARDOUS CIGARETTE, THE PROGRAM WHICH THEY ABANDONED IN 1970 WHEN THEY DECIDED TO QUIT TRYING TO MAKE A SAFER CIGARETTE AND INSTEAD TO TRY TO DISCOURAGE PEOPLE FROM SMOKING.

IN '69, THERE WERE ADDITIONAL HEARINGS, THE AMENDED WARNINGS THAT I TOLD YOU ABOUT AND SHOWED YOU. AND IN DECEMBER OF '70, THEY CAME UP WITH THE LAST MANEUVER ON THE TAR AND NICOTINE ADS.

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THEY SAID, "LET'S REQUIRE THEM." AND THEY DID, AS OF FEBRUARY 1971.

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SO YOU GO FROM "YOU CAN'T DO IT" TO "YOU CAN DO IT" TO "YOU WILL DO IT."

AND SO TAR AND NICOTINE LEVELS HAVE BEEN DISCLOSED ON ALL ADVERTISING SINCE 1971. AND SINCE JANUARY OF '71, THERE HAS BEEN NO RADIO OR TELEVISION ADVERTISING OF CIGARETTES, A YEAR BEFORE LESLIE WHITELEY SAID SHE STARTED TO SMOKE.

THERE HAVE BEEN WARNINGS. THE PACKAGE WARNINGS HAVE BEEN ON THE ADS SINCE '72.

IN '85, THE ROTATING WARNINGS I SHOWED YOU. AND THEN THIS LAST ONE IS INTERESTING. YOU WILL HEAR A GOOD BIT OF EVIDENCE ABOUT THIS, BECAUSE IN '64, THE SURGEON GENERAL SAID, "HERE IS HOW WE DEFINE 'ADDICTION.' CIGARETTE SMOKING DOESN'T FIT IT. CIGARETTE SMOKING IS A HABIT."

AND YOU WILL HEAR FROM THE EVIDENCE THAT WHEN THE SURGEON GENERAL THEN SAID THAT HE WAS CHANGING THE DEFINITION, AND THAT NICOTINE AND CIGARETTES FIT IT AND ARE ADDICTIVE, AND COMPARED THEM TO HARD DRUGS, THAT THE TOBACCO COMPANIES INDEED DIDN'T LIKE THAT. AND YOU'LL HEAR EVIDENCE TO THAT EFFECT.

NOWADAYS, EVERYBODY PRETTY MUCH ADMITS THAT THE COMMON USAGE OF THE TERM "ADDICTIVE," IF YOU DEFINE IT IN A COMMON WAY THAT IS DONE MOST OFTEN NOW, THEN CIGARETTE SMOKING IS ADDICTIVE.

I'M ALMOST THROUGH. I WILL DO CAUSATION REAL QUICKLY. THERE'S AN OVERWHELMING CONSENSUS IN SCIENCE AND IN THE PUBLIC HEALTH SERVICE ESPECIALLY THAT CIGARETTE SMOKING CAUSES LUNG CANCER, INCLUDING THE CELL TYPE THAT

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LESLIE WHITELEY WAS DIAGNOSED WITH IN 1998, SMALL CELL LUNG CANCER.

THERE ARE A VARIETY OF TYPES OF LUNG CANCER: ADENOCARCINOMA, SQUAMOUS CELL CARCINOMA, LARGE CELL, SMALL CELL.

AND THEY OCCUR IN SMOKERS AND NONSMOKERS. THEY OCCUR MUCH MORE IN SMOKERS THAN THEY DO IN NONSMOKERS. THEY OCCUR ALL OVER THE BODY, NOT JUST IN THE LUNGS.

SCIENCE RECOGNIZES THAT THERE ARE OTHER SIGNIFICANT RISK FACTORS FOR A VARIETY OF CANCERS, AND ESPECIALLY FOR LUNG CANCER. AND YOU'VE HEARD AND SEEN SOMETHING ABOUT THAT. THEY INDEED INCLUDE RADON AND ASBESTOS AND MARIJUANA AND HEAVY METALS. SCIENCE, I THINK, STILL HAS A LOT TO LEARN ABOUT THIS TOPIC.

MR. BROWN: YOUR HONOR, OBJECTION. ARGUMENT.

THE COURT: IT DEPENDS ON WHETHER YOU'RE TELLING

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

US WHAT THE EVIDENCE IS GOING TO SHOW.

ARE YOU GIVING US YOUR OWN VIEWS? IF THE EVIDENCE IS GOING TO SHOW IT, YOU CAN STATE IT.

MR. HARDY: THE EVIDENCE WILL SHOW THAT 90 PERCENT OF CIGARETTE SMOKERS DON'T GET LUNG CANCER.

THE EVIDENCE WILL SHOW THAT NONSMOKERS GET EVERY KIND OF LUNG CANCER THAT CIGARETTE SMOKERS GET. NOT NEARLY AS MUCH, BUT THEY DO GET IT.

THE EVIDENCE WILL SHOW THAT SCIENCE HAS BEEN UNABLE TO DO ANIMAL INHALATION STUDIES CREATING LUNG TUMORS AND THEN REPRODUCING THOSE STUDIES WITH CIGARETTE SMOKE.

IN THE '50S AND '60S, SOME PEOPLE SAID, "WELL,

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THE REASON WE CAN'T DO THESE STUDIES IS BECAUSE WE CAN'T GET THE ANIMALS TO SMOKE. THEY DON'T WANT TO SMOKE."

SINCE THE EARLY '70S, IT'S BEEN CLEAR THAT MANY SCIENTISTS KNOW HOW TO DO ANIMAL INHALATION STUDIES SO THAT THE MICE HAVE NO CHOICE BUT TO SMOKE, AND YET THEY HAVEN'T BEEN ABLE TO GET REPRODUCIBLE LUNG TUMORS IN THE TEST ANIMALS AND THEY DON'T UNDERSTAND WHY.

THE EVIDENCE WILL SHOW THEY DON'T UNDERSTAND WHY, ESPECIALLY BECAUSE THEY HAVE GOTTEN LUNG TUMORS THROUGH ANIMAL INHALATION STUDIES WITH DIESEL EXHAUST.

AND IN SPITE OF THE FACT THAT THERE ARE PLENTY OF SUSPECTS, ANIMAL CARCINOGENS IN CIGARETTE SMOKE, SCIENCE STILL DOES NOT AGREE ON WHAT THE SUBSTANCE OR SUBSTANCES ARE, WHAT THE REAL CULPRIT IS, AND THEY DON'T UNDERSTAND WHAT THE MECHANISM IS YET; THAT IS, HOW THAT FIRST CELL CHANGES OR MUTATES AND STARTS TO GROW OUT OF CONTROL.

THERE ARE THEORIES ABOUT IT AND SCIENTISTS MAKE A LOT OF PROGRESS, BUT THEY STILL DON'T UNDERSTAND IT YET.

NOW, AS THE EVIDENCE GOT STRONGER OVER THE YEARS, AS THE STATISTICS GREW AND THE QUALITY OF THE EVIDENCE IMPROVED FROM THE '60S AND BEYOND, THE COMPANIES QUIT SAYING, AS THEY DID IN THE '50S, THAT "WE DON'T THINK OUR PRODUCT CAUSES DISEASES," AND THEY BEGAN TO SAY, "IT'S A RISK FACTOR. MAYBE IT DOES CAUSE CANCER." AND I THINK THAT'S WHAT THEY SAID ALL DURING THE TIME THAT LESLIE WHITELEY WAS A SMOKER.

AND YOU WILL NOT SEE ANY EVIDENCE THAT THEY EVER TOLD HER THAT CIGARETTE SMOKING WAS SAFE. TODAY, THEY DON'T

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ARGUE, PHILIP MORRIS OR R.J. REYNOLDS, WITH THE PUBLIC HEALTH SERVICE.

THEY ESSENTIALLY TELL SMOKERS: "IF YOU'RE CONSIDERING WHETHER TO SMOKE, IF YOU'RE CONSIDERING WHETHER TO QUIT SMOKING, AND YOU ARE AWARE OF THE PUBLIC HEALTH SERVICE MESSAGE, RELY ON IT."

NOW, FINALLY, CAN THE PLAINTIFFS PROVE THAT CIGARETTE SMOKE CAUSED LESLIE WHITELEY'S LUNG CANCER?

YOU'LL OF COURSE HEAR EVIDENCE ABOUT HER

http://legacy.library.ucsf.edu/tid/zni07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

SMOKING. YOU WILL ALSO LEARN SHE MAY HAVE INHERITED A TENDENCY TO GET LUNG CANCER BECAUSE THERE WAS SOME LUNG CANCER AND SOME OTHER CANCER IN HER FAMILY.

THIS IS A CASE ABOUT HER LIFE-STYLE, THE CHOICES SHE MADE, NOT JUST IN THE '90S, BUT ESSENTIALLY IN THE '80S AND THE 1970S.

SO YOU ARE GOING TO HEAR EVIDENCE NOT JUST ABOUT HER CIGARETTE SMOKING, BUT ABOUT HER ABUSE OF ALCOHOL, HER USE OF COCAINE, OTHER DRUGS, AND ESPECIALLY MARIJUANA. MARIJUANA, WHICH HER MEDICAL RECORDS SAY IN VARIOUS PLACES, WITH PERSONAL HISTORIES GIVEN BY HER TO THE DOCTORS, THAT SHE USED FOR 10 PLUS-YEARS EXCESSIVELY, EXTENSIVELY AND HEAVILY.

AND WE OFFER THIS EVIDENCE NOT TO EMBARRASS MRS. WHITELEY BUT TO SHOW THAT SHE PUT HERSELF AT RISK FOR LUNG CANCER AND OTHER DISEASES THROUGH SOME OF THE CHOICES SHE MADE.

AND WE ALSO OFFER IT TO SHOW THAT SHE WAS AND IS AN INDEPENDENT WOMAN, WHO MAKES CHOICES IN LIFE, WHO DOES

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THE THINGS SHE WANTS TO DO, AND WHEN SHE WANTS TO STOP, SHE STOPS.

NOW, YOU MAY BE SURPRISED TO LEARN THAT THERE IS NO MEDICAL OR SCIENTIFIC TEST THAT ANYBODY CAN GIVE LESLIE WHITELEY TO DECIDE OR TO DETERMINE WHAT KIND OF CONTRIBUTION OR HOW MUCH ANY SUBSTANCE HAS CONTRIBUTED TO HER CANCER.

BUT WE DO KNOW THAT LESLIE WHITELEY WAS DIAGNOSED WITH LUNG CANCER AT AGE 38. IF YOU LOOK AT THE EVIDENCE THAT YOU'LL SEE, YOU WON'T SEE ANY STUDIES SHOWING AN INCREASED RISK OF LUNG CANCER FOR PEOPLE WHO ARE UNDER 40 FROM SMOKING.

SOME WITNESSES WILL SUGGEST THAT DOESN'T MAKE ANY DIFFERENCE; YOU JUST LOOK AT THE LENGTH OF TIME THEY SMOKED. BUT WHEN YOU SEE THE STUDIES, YOU WILL SEE THAT THE STUDIES LOOK AT LENGTH OF TIME, AND THEY LOOK AT AGE AND OTHER FACTORS, LIKE AMOUNT OF SMOKING.

AND YOU WILL SEE THAT THERE ISN'T ANY STUDY THAT SHOWS AN INCREASED RISK FOR A 38-YEAR-OLD WOMAN SMOKER. YOU WILL ALSO SEE THAT SOME OF THE CLINICAL STUDIES ON LUNG CANCER AND MARIJUANA SMOKER FIT BY THAT AGE.

I THANK YOU FOR BEING SO ATTENTIVE. I'M SORRY I'VE BEEN SO LONG. I'M TURNING IT OVER TO MR. FURR AT THIS POINT.

I SIMPLY REMIND YOU THAT THESE STATEMENTS, THESE OPENING STATEMENTS THAT PRESENT VIEWS OF THE EVIDENCE ARE IN A WAY PROMISES BY THE ATTORNEYS AS TO WHAT THE EVIDENCE IS GOING TO BE IN THIS CASE, AND WHEN IT'S ALL IN FROM BOTH

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

SIDES, YOU CAN LOOK BACK AND SEE WHO HAS KEPT THEIR PROMISE.

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THANK YOU.

THE COURT: OKAY.

MR. FURR, WHAT DO YOU THINK ABOUT OUR TAKING A RECESS?

MR. FURR: THAT'S FINE, YOUR HONOR.

THE COURT: OKAY. IF WE TAKE A 20-MINUTE RECESS -- MR. ROSSE, ARE YOU GOING TO MAKE AN OPENING STATEMENT? ARE YOU DEFERRING?

MR. ROSSE: I'M GOING TO RESERVE, YOUR HONOR.

THE COURT: YOU ARE GOING TO RESERVE.

SO WE ARE GOING TO YOURS, MR. FURR.

IF WE TAKE A 20-MINUTE RECESS UNTIL 3:20, WILL YOU HAVE THE TIME YOU NEED TO FINISH TODAY?

MR. FURR: I WILL FINISH BY 5:00 O'CLOCK.

THE COURT: JURORS, LET'S TAKE A 20-MINUTE RECESS UNTIL 3:20. PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT 3:20.

(RECESS TAKEN FROM 3:00 TO 3:25 P.M.)

THE COURT: WE ARE BACK ON THE RECORD.

MR. FURR, YOU MAY PROCEED.

MR. FURR: THANK YOU, YOUR HONOR

OPENING STATEMENT BY MR. FURR

MR. FURR: GOOD AFTERNOON, LADIES AND GENTLEMEN. I HAVEN'T SPOKEN TO YOU FOR A FEW DAYS, SO LET ME BEGIN BY INTRODUCING MYSELF. MY NAME IS JEFF FURR. AS YOU LISTEN TO ME, YOU'RE ALL GOING TO REALIZE I'M NOT FROM HERE. ALONG WITH JOE ESCHER, WHO IS SEATED AT THE END OF THE TABLE, I REPRESENT R.J. REYNOLDS.

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THE GOOD NEWS FOR YOU IS THAT I'M THE LAST LAWYER THAT YOU ARE GOING TO BE HEARING FROM TODAY.

THE BAD NEWS MAY BE THAT THERE ARE NO NEW TOPICS FOR ME TO ADDRESS. ALL THE TOPICS AND ISSUES THAT THE EVIDENCE IN THIS CASE ARE GOING TO RELATE TO HAVE BEEN RAISED WITH YOU. BUT WHAT I'M GOING TO TRY VERY HARD NOT TO DO IS REPEAT ANYTHING, ESPECIALLY ANYTHING THAT MR. HARDY SAID.

INSTEAD, WHAT I'M GOING TO DO IS TALK TO YOU ABOUT SOME ADDITIONAL EVIDENCE THAT YOU ARE GOING TO HEAR IN THIS CASE RELATED TO THE ISSUES THAT HE RAISED.

AND I'M ALSO PERHAPS GOING TO GIVE YOU A LITTLE MORE DETAIL ABOUT SOME OF THE TOPICS THAT HE DISCUSSED. I'M GOING TO CONFINE MY REMARKS TODAY TO THREE ISSUES.

FIRST, I'M GOING TO ADDRESS WITH YOU THE EVIDENCE THAT DEMONSTRATES THAT PHILIP MORRIS AND R.J. REYNOLDS MAKE THE BEST, THE MOST ADVANCED, THE SAFEST AND THE LEAST HAZARDOUS CIGARETTES THAT ARE AVAILABLE ANYWHERE IN THE WORLD TODAY.

SECOND, I'M GOING TO TALK TO YOU ABOUT THE EVIDENCE THAT WILL DEMONSTRATE THAT THE QUESTION OF WHETHER NICOTINE IS ADDICTIVE IS A DIFFERENT QUESTION THAN WHETHER MRS. WHITELEY COULD HAVE STOPPED SMOKING ANY TIME THAT SHE

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

REALLY WANTED TO.

FINALLY, I'M GOING TO ADDRESS WITH YOU THE EVIDENCE THAT WILL DEMONSTRATE THAT PHILIP MORRIS AND R.J. REYNOLDS DO NOT MARKET TO AND DO NOT TARGET UNDERAGE SMOKERS WITH THEIR ADVERTISING. AND THAT WILL DEMONSTRATE THAT

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NOTHING ABOUT THE MARKETING, PROMOTIONAL ACTIVITIES OR ADVERTISING ACTIVITIES HAD ANYTHING TO DO WITH MRS. WHITELEY'S DECISION TO BEGIN SMOKING AS A 13-YEAR-OLD.

THE QUESTION OF HOW TO MAKE A SAFER CIGARETTE IS NOT A NEW QUESTION. THE UNITED STATES GOVERNMENT, THE PUBLIC HEALTH COMMUNITY IN THIS COUNTRY, FOREIGN GOVERNMENTS, FOREIGN PUBLIC HEALTH ENTITIES, PRIVATE RESEARCH INSTITUTIONS IN THE UNITED STATES AND IN FOREIGN GOVERNMENTS HAVE ALL BEEN STUDYING FOR DECADES HOW TO MAKE CIGARETTES SAFER AND LESS HAZARDOUS.

AND NO ENTITY ANYWHERE IN THE WORLD HAS COME UP WITH A WAY TO MAKE CIGARETTES THAT ARE SAFER AND LESS HAZARDOUS THAN THE PRODUCTS THAT PHILIP MORRIS AND R.J. REYNOLDS MAKES.

YOU'VE HEARD TODAY THAT THE REAL SCIENTIFIC STUDIES LINKING SMOKING WITH LUNG CANCER BEGAN TO BE PRODUCED IN THE 1950S, AND THAT'S CORRECT.

AND WHEN THOSE STUDIES WERE FIRST PRODUCED, PHILIP MORRIS AND R.J. REYNOLDS HAD TO MAKE A CHOICE. THEY COULD HAVE CHOSEN TO GO OUT OF BUSINESS AND STOP MANUFACTURING CIGARETTES.

HOWEVER, THERE WAS ALREADY A DEMAND FOR CIGARETTES IN THIS COUNTRY AND IN OTHER COUNTRIES. THE UNITED STATES GOVERNMENT HAD ALREADY DETERMINED THAT IT SHOULD BE LEGAL TO MANUFACTURE, ADVERTISE AND SELL CIGARETTES IN THIS COUNTRY.

HAD PHILIP MORRIS AND R.J. REYNOLDS GONE OUT OF BUSINESS IN THE 1950S, ALL THAT WOULD HAVE RESULTED IS THAT

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CONSUMERS --

MR. BROWN: YOUR HONOR, THIS IS ARGUMENTATIVE.

THE COURT: SUSTAINED.

MR. FURR: THERE WAS A SECOND CHOICE. AND THE CHOICE THAT PHILIP MORRIS AND R.J. REYNOLDS MADE WAS TO BEGIN WHAT IS NOW A 45-YEAR-LONG RESEARCH PROJECT IN HOW TO MAKE A BETTER, SAFER CIGARETTE.

IT WAS RECOGNIZED FROM THE VERY BEGINNING THAT IF CIGARETTES WERE CAUSING LUNG CANCER IN NONSMOKERS, IT HAD TO BE DUE TO SOMETHING THAT WAS IN THE SMOKE.

AND SO THE DECISION WAS MADE AT THOSE COMPANIES TO BEGIN STUDYING THE CHEMISTRY OF CIGARETTE SMOKE TO ATTEMPT TO DETERMINE WHAT IN THE SMOKE WAS RESPONSIBLE FOR THE CANCER RISK.

THE COMPANIES ACQUIRED -- I SHOULD SAY, THE COMPANIES HIRED NUMEROUS PH.D.-LEVEL SCIENTISTS, PRIMARILY CHEMISTS. THEY BUILT STATE-OF-THE-ART LABORATORIES AND ACQUIRED STATE-OF-THE-ART SCIENTIFIC EQUIPMENT, AND BEGAN ANALYZING AND ASSESSING THE CHEMISTRY OF CIGARETTE SMOKE.

IT WAS A VERY DIFFICULT TASK IN THE BEGINNING,

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

IN THE 1950S. IN THE 1950S, THERE WERE ONLY ABOUT 100 CONSTITUENTS OF CIGARETTE SMOKE KNOWN. TODAY, THERE ARE OVER 4,000 CONSTITUENTS IN THIS COMPLEX MIXTURE THAT WE CALL CIGARETTE SMOKE.

MUCH OF THE EQUIPMENT THAT WAS NEEDED TO STUDY AND DETERMINE WHAT CHEMICALS ARE IN CIGARETTE SMOKE DIDN'T EVEN EXIST IN THE 1950S. THESE COMPANIES, AS YOU WILL LEARN, INVENTED MUCH OF THE EQUIPMENT THAT IS USED TO STUDY

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COMPLEX MIXTURES LIKE CIGARETTE SMOKE.

AND OF COURSE, MANY INDUSTRIES AND SCIENTIFIC INSTITUTIONS IN THE WORLD THAT USE THOSE SAME TECHNOLOGIES TO CONDUCT ANALYTICAL CHEMISTRY WORK WITH EQUIPMENT THAT WAS INVENTED BY THESE COMPANIES.

THESE COMPANIES DECIDED THAT THEY WOULD ATTEMPT TO UNDERSTAND THE CHEMISTRY OF CIGARETTE SMOKE, DETERMINE WHAT THE CONSTITUENTS, AS MR. HARDY EXPLAINED TO YOU, IN CIGARETTE SMOKE MIGHT BE RESPONSIBLE FOR THE RISK OF CANCER THAT SMOKERS SEEM TO HAVE, AND ATTEMPT TO REMOVE THOSE CONSTITUENTS. AND THEY BEGAN WHAT WAS REALLY SORT OF A SIMULTANEOUS PROCESS OF ATTEMPTING TO UNDERSTAND WHAT IN SMOKE WAS RESPONSIBLE FOR THE RISK OF CANCER, AND DEVELOP PRODUCTS THAT WOULD DECREASE OR ELIMINATE THE CONSTITUENTS THAT WERE THOUGHT TO BE RESPONSIBLE.

THERE WERE TWO GENERAL TECHNIQUES THAT THEY USED AND USE TODAY. LET ME PUT UP THE FIRST BOARD THAT ILLUSTRATE WHAT THOSE TECHNIQUES ARE.

THIS IS ONE OF THE TOPICS THAT I WILL COVER PERHAPS THAT MR. HARDY MENTIONED TO YOU, BUT I WILL COVER IN A LITTLE MORE DETAIL (INDICATING).

ONE OF THE TECHNIQUES THAT HAS BEEN USED TO CHANGE THE SMOKE OF CIGARETTES IS KNOWN AS SELECTIVE REDUCTION, SELECTIVE REDUCTION OF SMOKE CONSTITUENTS.

WHAT THAT MEANS IS TO SELECTIVELY REDUCE OR ELIMINATE TARGET COMPOUNDS THAT THE SCIENTIFIC COMMUNITY SPECULATES TO BE POSSIBLY THE PROBLEM, THE CANCER-CAUSING FACTORS IN CIGARETTE SMOKE.

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THE SECOND APPROACH THAT THE COMPANIES HAVE TAKEN IS KNOWN AS GENERAL REDUCTION, GENERAL REDUCTION OF SMOKE CONSTITUENTS.

WHAT THAT MEANS IS REDUCING THE TOTAL SMOKE YIELDS, THAT IS, REDUCING EVERYTHING THAT IS PRESENT IN CIGARETTE SMOKE, UNDER THE ASSUMPTION THAT IF YOU REDUCE EVERYTHING THAT IS PRESENT IN CIGARETTE SMOKE, THEN YOU ARE BOUND TO BE REDUCING THE CONSTITUENTS THAT APPEAR TO BE THE PROBLEM IN CIGARETTE SMOKE.

LET ME TALK TO YOU FIRST IN A LITTLE MORE DETAIL ABOUT SELECTIVE REDUCTION, WHAT THE COMPANIES DID OVER TIME, THE PROBLEMS THEY ENCOUNTERED.

FIRST, THE EVIDENCE WILL BE THAT SELECTIVE

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REDUCTION OF CIGARETTE SMOKE CONSTITUENTS IS A HIGHLY TECHNICAL APPROACH. THE FIRST THING THAT YOU HAVE TO DO IS IDENTIFY WHICH TARGET COMPOUNDS THAT YOU WILL ATTEMPT TO REDUCE.

IN LARGE PART, THE COMPANIES RELIED ON WHAT PUBLIC HEALTH OFFICIALS WERE SAYING ABOUT THE COMPOUNDS THAT SHOULD BE TARGETED. HOWEVER, YOU WILL, AS MS. CHABER SUGGESTED THIS MORNING, SEE DOCUMENTS FROM THESE COMPANIES' FILES IN WHICH THE COMPANIES' SCIENTISTS ARE SPECULATING THEMSELVES AS TO WHICH COMPOUNDS IN CIGARETTE SMOKE MIGHT BE THE PROBLEM.

BUT WHAT YOU ARE ALSO GOING TO SEE IS THAT WHEN COMPANY SCIENTISTS IDENTIFIED GROUPS OF COMPOUNDS THAT THEY THOUGHT POSSIBLY TO BE THE PROBLEM, THEY THEN SET ABOUT TRYING TO IDENTIFY TECHNOLOGIES AND WAYS TO REDUCE THOSE

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COMPOUNDS.

AND THAT IS, OF COURSE, THE NEXT THING THAT THE SCIENTISTS HAD TO DO WAS TO IDENTIFY TECHNOLOGIES THAT COULD BE USED TO REDUCE SPECIFIC CHEMISTRIES. THIS HAS PROVEN TO BE A VERY DIFFICULT PROBLEM.

YOU HAVE A COMPLEX MIXTURE OF 4,000 CONSTITUENTS, AND WHAT THE SCIENTISTS WERE ATTEMPTING TO DO IS REACH INTO THAT MIXTURE AND TAKE OUT ONLY CERTAIN FRACTIONS OF THE CIGARETTE SMOKE.

AND FINALLY, YOU ARE GOING TO HEAR FROM MANY WITNESSES IN THIS CASE THAT EVEN IF THE COMPANIES ARE ABLE TO IDENTIFY THE TARGET COMPOUNDS AND IDENTIFY TECHNOLOGIES TO REDUCE CERTAIN SPECIFIC CHEMICAL CONSTITUENTS IN THE SMOKE, THEN THEY NEXT HAVE TO DETERMINE WHETHER OR NOT THE PRODUCT THAT RESULTS IS COMMERCIALLY FEASIBLE.

YOU WILL HEAR FROM A NUMBER OF WITNESSES THAT THERE ARE TECHNOLOGIES AVAILABLE THAT CAN REDUCE THE YIELD OF CIGARETTE SMOKE, IN TERMS OF TAR AND NICOTINE, AT LEAST TO VIRTUALLY ZERO.

BUT IF THESE TECHNOLOGIES DON'T RESULT IN A CIGARETTE THAT CONSUMERS WILL BUY AND SMOKE, IT HAS NO NET BENEFIT TO THE PUBLIC HEALTH THAN IF THEY CONTINUE TO SIMPLY CONTINUE TO SMOKE OTHER PRODUCTS INSTEAD.

IT'S BEEN A VERY DIFFICULT APPROACH FOR A NUMBER OF REASONS. FIRST, THERE'S ALWAYS BEEN WHAT WE REFER TO AS A HISTORY OF MOVING TARGETS.

THE PUBLIC HEALTH OFFICIALS, AND EVEN SCIENTISTS WITHIN COMPANIES, WOULD IDENTIFY ONE SET OF CONSTITUENTS

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THAT APPEAR TO BE A PROBLEM, AND WOULD SET OUT ON THE PROCESS OF ATTEMPTING TO IDENTIFY A TECHNOLOGY THAT THEY COULD USE TO REDUCE THOSE TARGETS.

BEFORE THAT PROCESS WOULD BE COMPLETED, THERE WOULD BE A SHIFT IN THINKING IN THE SCIENTIFIC COMMUNITY,

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AND SCIENTISTS WOULD TAKE THE POSITION THAT, NO, IT REALLY WASN'T THE SET OF COMPOUNDS THAT YOU'RE CURRENTLY WORKING ON. INSTEAD, IT'S MORE LIKELY TO BE A DIFFERENT SET OF COMPOUNDS THAT YOU SHOULD BE TARGETING.

THE COMPANIES WOULD BE FORCED TO SHIFT THEIR FOCUS AND RESOURCES TO BEGIN LOOKING AT ANOTHER SET OF TARGET COMPOUNDS.

I TOLD YOU IT WAS TECHNICALLY DIFFICULT. THERE WAS NO OFF-THE-SHELF TECHNOLOGY THAT THESE COMPANIES COULD BUY. IF THESE COMPANIES DECIDED TO ATTEMPT TO REDUCE NITROSAMINES, FOR EXAMPLE, THEY HAD TO INVENT THE TECHNOLOGY THAT DOES THAT. THEY CAN'T TURN TO ANY OTHER TYPE OF --

MR. BROWN: OBJECTION. ARGUMENT, YOUR HONOR.

I DON'T KNOW WHETHER HE'S SAYING THEY DID IT OR WHETHER HE'S JUST SPECULATING ON IT.

MR. FURR: WHAT I'M SAYING, YOUR HONOR, IS THAT THE EVIDENCE WILL BE VERY CLEAR THAT THESE COMPANIES HAVE TO INVENT THE TECHNOLOGY THAT IS NEEDED TO REDUCE SPECIFIC TARGET COMPOUNDS, BECAUSE THERE IS NO VENDOR THAT THEY CAN GO TO TO PURCHASE THOSE TYPE OF TECHNOLOGIES.

THERE'S ANOTHER TYPE OF PROBLEM THAT THE WITNESSES IN THIS CASE WILL TELL YOU ABOUT, AND THAT IS THE PROBLEM OF UNFORESEEN SMOKE MODIFICATIONS. SMOKE IS A

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COMPLEX MIXTURE. THE SUBSTANCES IN CIGARETTE SMOKE INTERACT WITH EACH OTHER.

WHEN YOU REACH INTO THE MIXTURES AND PULL SOMETHING OUT, ONE OF THE THINGS THAT SOMETIMES HAPPENS IN AN UNFORESEEABLE FASHION IS THAT SOME OTHER CONSTITUENT THAT IS ALSO THOUGHT TO BE POSSIBLY PROBLEMATIC MAY ACTUALLY GO UP.

SO EACH TIME THE COMPANIES INTRODUCE SOME TYPE OF TECHNICAL MODIFICATION TO A CIGARETTE, THEY HAVE TO ASSAY THE SMOKE COMPLETELY TO MAKE SURE THAT THEY HAVE NOT DONE SOMETHING THAT IN AN UNFORESEEABLE FASHION HAS ABSOLUTELY MADE CIGARETTES MORE RISKY.

YOU WILL HEAR IN THIS CASE FROM A WITNESS FROM R.J. REYNOLDS THAT R.J. REYNOLDS HAS A PROGRAM CALLED ITS PRODUCT STEWARDSHIP PROGRAM. AND THAT'S A PROGRAM AT REYNOLDS THAT IS DEVOTED TO MAKING SURE THESE TYPE OF UNFORESEEN THINGS DON'T HAPPEN.

WHENEVER A CHANGE IS MADE TO A CIGARETTE AT R.J. REYNOLDS, WHETHER IT'S IN THE MANUFACTURING OF THE CIGARETTE OR ADDITIVES USED IN THE CIGARETTE OR SOME OTHER TECHNOLOGICAL CHANGE TO THE PRODUCT, THEY INCLUDE A GROUP OF SCIENTISTS AT R.J. REYNOLDS IN THE PRODUCT STEWARDSHIP PROGRAM, TECHNOLOGISTS, CHEMISTS, STATISTICIANS AND OTHERS, AND THEY HAVE TO PASS ON THAT CHANGE.

THEY HAVE TO, AS A GROUP, CONCLUDE THAT THAT CHANGE WILL NOT ADD TO THE INHERENT BIOLOGICAL ACTIVITY OF TOBACCO BEFORE THAT CHANGE IS INTRODUCED INTO ANY PRODUCT THAT'S MANUFACTURED AND SOLD BY R.J. REYNOLDS.

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

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OF COURSE, AS I TOLD YOU BEFORE, CONSUMER ACCEPTANCE IS ALWAYS THE FINAL CHECK ON ANY SELECTIVE REDUCTION EFFORT. IT'S BEEN A DIFFICULT APPROACH. IT'S MET WITH MIXED SUCCESS, BUT YOU ARE GOING TO LEARN THAT THE COMPANIES HAVE NEVER GIVEN UP ON THIS APPROACH.

IN FACT, YOU HEARD THIS MORNING FROM MS. CHABER IN HER OPENING THAT ONE OF THESE SET OF TARGET COMPOUNDS THAT HAS RECEIVED A GREAT DEAL OF ATTENTION IS SOMETHING KNOWN AS NITROSAMINES.

VERY RECENTLY, REYNOLDS HAS MADE A BREAKTHROUGH IN HOW TO REDUCE NITROSAMINES IN CIGARETTE SMOKE. THE COMPANY FOUND THAT THE MANNER IN WHICH FARMERS WERE DRYING OR CURING THE TOBACCO IN THE FIELD WAS CAUSING AN INCREASE IN NITROSAMINES. THEY FOUND THAT A TYPE OF TECHNOLOGY THAT THE FARMERS WERE ACTUALLY USING IN THEIR BARNS TO DRY THE TOBACCO, CALLED DIRECT FIRE CURING, WAS CAUSING AN INCREASE IN NITROSAMINES.

WHEN THE COMPANY LEARNED THAT, THE FIRST THING THEY DID -- EXCUSE ME -- AND WHAT THE COMPANY LEARNED ALSO IS THAT BY USING A DIFFERENT TECHNOLOGY, A TECHNOLOGY KNOWN AS HEAT EXCHANGE CURING, THAT NITROSAMINE LEVELS IN TOBACCO COULD BE DECREASED BY 90 PERCENT.

WHEN THE COMPANIES LEARNED THAT, THE FIRST THING THEY DID IS SHARE THAT INFORMATION WITH THE PUBLIC HEALTH COMMUNITY AND WITH THEIR COMPETITORS AT PHILIP MORRIS AND AT THE OTHER TOBACCO COMPANIES.

THE NEXT THING THAT THE COMPANY DID WAS BEGIN PURCHASING THESE HEAT EXCHANGE UNITS THAT CAN BE SUBSTITUTED

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FOR THE TECHNOLOGY THAT FARMERS ARE CURRENTLY USING AND GIVING THOSE UNITS FREE OF CHARGE TO FARMERS.

BUT THEY DIDN'T STOP THERE. THEY HAVE BEEN PROVIDING FINANCIAL ASSISTANCE TO FARMERS, SO THAT THEY CAN INTRODUCE THIS NEW TECHNOLOGY IN THE BARNS, IN THE FIELDS, TO DECREASE THE NITROSAMINE LEVEL OF TOBACCO.

I MENTIONED THAT THE SECOND GENERAL APPROACH THAT THE COMPANIES HAVE TAKEN TO MODIFY CIGARETTE SMOKE IS REFERRED TO AS GENERAL REDUCTION. THE CONCEPT IS REALLY VERY SIMPLE. YOU HEARD MS. CHABER EXPLAIN IT THIS MORNING. AND THAT'S THE CONCEPT OF DOSE RESPONSE.

YOU HAVE CIGARETTE SMOKE THAT IS TOXIC. YOU HAVE CIGARETTE SMOKE THAT IS CARCENOGENIC. MEDICAL DOCTORS AND OTHER SCIENTISTS BELIEVE THAT LESS SMOKE WOULD BE BETTER FOR YOU. LESS SMOKE WOULD BE LESS CARCINOGENIC. LESS SMOKE WOULD BE LESS TOXIC.

SO THE COMPANIES SET OUT TO TRY TO REDUCE THE AMOUNT OF SMOKE THAT A SMOKER INHALES WHEN THEY SMOKE A CIGARETTE, AND THAT'S MEASURED BY ASSESSING THE TAR AND NICOTINE YIELD TO DELIVERY OF CIGARETTES PRODUCTS.

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

OVER TIME, THE COMPANIES HAVE INTRODUCED A NUMBER OF TECHNOLOGIES, SUCH AS FILTERS, RECONSTITUTED TOBACCO, POROUS CIGARETTE PAPER, THE FILTERED VENTILATION AND EXPANDED TOBACCO.

WE ARE GOING TO BRING TO YOU -- BOTH COMPANIES, PHILIP MORRIS AND R.J. REYNOLDS, ARE GOING TO BRING TO YOU PROFESSIONAL SCIENTISTS WHO HAVE SPENT THEIR CAREERS DESIGNING CIGARETTES. THEY ARE GOING TO EXPLAIN EACH OF

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THESE TECHNOLOGIES TO YOU.

AND I WON'T BELABOR THAT NOW OTHER THAN TO TELL YOU THAT EACH OF THESE TECHNOLOGIES HAS BEEN DEMONSTRATED TO BE EFFECTIVE IN DECREASING THE TAR AND NICOTINE YIELD OF CIGARETTES AND THAT THE SURGEON GENERAL OF THE UNITED STATES HAS SAID SO IN VARIOUS SURGEON GENERAL REPORTS.

YOU HEARD MR. HARDY MENTION EARLIER THAT DR. WYNDER, A VERY FAMOUS NAME THAT YOU ARE GOING TO HEAR ABOUT A LOT DURING THIS TRIAL, AND OTHER PUBLIC HEALTH SCIENTISTS FROM THE EARLY 1950S, STRONGLY ENCOURAGED THE COMPANIES TO DECREASE THE TAR AND NICOTINE YIELD OF CIGARETTE PRODUCTS.

AND YOU HEARD MR. HARDY SAY ALSO THAT ONE OF THE TARGETS THAT WAS SET OUT FOR THE COMPANIES WAS TO DECREASE THE TAR AND NICOTINE YIELDS BY 40 PERCENT.

I HAVE A CHART HERE THAT ILLUSTRATES FOR YOU THE ACTUAL ACCOMPLISHMENTS THAT THE COMPANIES HAVE MADE OVER THE PAST 40 OR SO YEARS IN THAT EFFORT. THE GREEN LINE (INDICATING) REPRESENTS THE DECREASES IN TAR YIELD OF SALES-WEIGHTED TAR -- I SHOULD SAY, THE SALES-WEIGHTED AVERAGE DECREASES IN TAR YIELD.

YOU'LL HEAR THIS TERM A LOT, THE SALES-WEIGHTED AVERAGE. ALL THAT MEANS IS THAT THE AVERAGE CIGARETTES THAT THE CONSUMERS SMOKE, IN THE UNITED STATES ANYWAY -- AS YOU CAN SEE, ON THIS AXIS OVER HERE IS THE TAR AXIS.

IN 1954, THE SALES-WEIGHTED AVERAGE FOR CIGARETTES SOLD IN THIS COUNTRY FOR TAR YIELD WAS ABOUT 38 MILLIGRAMS. BY 1992, THE SALES-WEIGHTED AVERAGE DROPPED TO

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12 MILLIGRAMS. THAT'S OVER A 70 PERCENT REDUCTION IN TAR YIELDS.

NOT THE 40 PERCENT THAT DR. WYNDER AND OTHERS WERE CALLING FOR, BUT A 70 PERCENT REDUCTION.

PARALLEL OR SIMILAR DECREASES WERE SEEN IN NICOTINE YIELD. THIS IS THE AXIS OVER HERE THAT YOU LOOK AT TO MEASURE THE DECREASES IN NICOTINE (INDICATING).

IN 1954, THE SALES-WEIGHTED AVERAGE CIGARETTE IN THIS COUNTRY YIELDED ABOUT 2.3 MILLIGRAMS OF NICOTINE. BY 1992, THE AVERAGE CIGARETTE SOLD IN THE U.S. YIELDED LESS THAN 1 MILLIGRAM OF NICOTINE.

SO AGAIN, THAT'S ALMOST A 70 PERCENT DECREASE. SO WHEN YOU HEAR CLAIMS IN THIS CASE ABOUT CIGARETTE MANUFACTURERS SPIKING THEIR PRODUCTS WITH NICOTINE, YOU MAY

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WANT TO REMEMBER THIS CHART.

MR. BROWN: OBJECTION. ARGUMENT.

THE COURT: IT IS. THE WAY YOU PHRASED IT, IT IS ARGUMENT.

MR. FURR: THIS MORNING, THE STATEMENT WAS MADE THAT R.J. REYNOLDS HAD DONE NOTHING, HAVE MADE NO CHANGES TO THE CAMEL CIGARETTE TO TRY TO MAKE IT A SAFER CIGARETTE.

I'M GOING PUT UP A CHART NEXT THAT'S GOING TO ILLUSTRATE FOR YOU SOME OF THE CHANGES THAT HAVE BEEN MADE TO THE CAMEL CIGARETTE OVER TIME.

IN 1955, THE NONFILTERED CAMEL CIGARETTE YIELDED 38.3 MILLIGRAMS OF TAR AND 3.4 MILLIGRAMS OF NICOTINE.

BY THE TIME MRS. WHITELEY FIRST BEGAN SMOKING CAMEL UNFILTERED CIGARETTES, WHICH WOULD HAVE BEEN AROUND

0698

1972, THE CAMEL UNFILTERED CIGARETTE YIELDED 25 MILLIGRAMS OF TAR AND LESS -- I SHOULD SAY 1.5 MILLIGRAMS OF NICOTINE. THAT'S A 40 PERCENT REDUCTION IN TAR AND NICOTINE YIELDS IN CAMEL CIGARETTES, EVEN BEFORE MRS. WHITELEY EVER SMOKED A CAMEL CIGARETTE.

YOU HEARD THAT SHE REALLY ONLY SPORADICALLY SMOKED UNFILTERED CAMELS IN THE EARLY 1970S, AND THAT CAMELS DID NOT ACTUALLY BECOME HER BRAND OF CHOICE UNTIL ABOUT 1984.

IN 1984, MRS. WHITELEY BEGAN SMOKING CAMEL LIGHT CIGARETTES. I'LL TALK TO YOU MORE IN A FEW MINUTES ABOUT WHY SHE BEGAN SMOKING CAMEL LIGHTS, BUT SHE DID BEGIN SMOKING THEM IN THE 1980S AS HER MAIN BRAND OF CIGARETTE SPECIFICALLY, ALTHOUGH SHE SMOKED SHORTER CAMEL LIGHTS.

SHE BEGAN SMOKING CAMEL LIGHTS 100S AS HER MAIN BRAND VERY SOON AFTER SHE MADE THE SWITCH.

WELL, THE CAMEL LIGHT 100 BRAND THAT MRS. WHITELEY BEGAN SMOKING YIELDED 10.7 MILLIGRAMS OF NICOTINE AND -- EXCUSE ME -- OF TAR AND 0.8 MILLIGRAMS OF NICOTINE. THAT IS OVER A 70 PERCENT REDUCTION IN THE TAR AND NICOTINE YIELDS FROM THE CAMEL 70 IN THE 1950S.

MRS. WHITE CONTINUED SMOKING CAMEL LIGHTS AS HER MAIN BRAND THROUGHOUT THE 1990S. AND SHE ACTUALLY HAD EVEN A LOWER TAR AND NICOTINE CHOICE THAT SHE COULD HAVE MADE. THE CAMEL ULTRA LIGHT 100'S, WHICH WERE INTRODUCED IN THE EARLY 1990S, YIELDED 5 MILLIGRAMS OF TAR AND 0.5 MILLIGRAMS OF NICOTINE.

THAT'S OVER AN 85 PERCENT DECREASE IN THE TAR AND

0699

NICOTINE YIELDS FROM THE UNFILTERED CAMEL OF THE 1950S. SO WHEN YOU HEAR CLAIMS AGAIN ABOUT NO CHANGES BEING MADE --

MR. BROWN: OBJECTION. ARGUMENT.

THE COURT: YES, IT IS, MR. FURR. YOU NEED TO AVOID ARGUMENT.

MR. FURR: THANK YOU, YOUR HONOR.

THIS IS WHAT THE EVIDENCE WILL BE WITH RESPECT

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

TO WHETHER OR NOT ANY CHANGES HAVE BEEN MADE IN THE CAMEL CIGARETTE OVER TIME (INDICATING).

IN 1981, THE SURGEON GENERAL ISSUED REPORTS ON SELECTED SMOKING AND HEALTH TOPICS, NOT ALWAYS EVERY YEAR, BUT AT LEAST EVERY OTHER YEAR OR SO.

AND IN 1981, THE SURGEON GENERAL ISSUED A REPORT TITLED "THE CHANGING CIGARETTE," IN WHICH THE SURGEON GENERAL LOOKED AT THE TYPE OF CHANGES THAT I'VE BEEN DESCRIBING FOR YOU AND THE HEALTH IMPLICATIONS OF THOSE CHANGES.

AND WHAT THE SURGEON GENERAL FOUND IN 1981 WAS THAT THE CIGARETTES BEING SOLD THEN WERE LESS TOXIC, PRODUCED A LOWER RISK OF OVERALL CANCER AND PRODUCED A LOWER RISK OF LUNG CANCER SPECIFICALLY THAN THE CIGARETTES THAT WERE SOLD IN THE 1950S.

I HAVE A BOARD HERE THAT SUMMARIZES PART OF WHAT THE SURGEON GENERAL FOUND IN 1981. THE SURGEON GENERAL FOUND, IN 1981, THAT "SMOKERS WHO ARE UNWILLING OR AS YET UNABLE TO QUIT ARE WELL ADVISED TO SWITCH TO CIGARETTES YIELDING LESS TAR AND NICOTINE, PROVIDED THEY DO NOT INCREASE THEIR SMOKING OR CHANGE THEIR SMOKING IN OTHER

0700

WAYS."

THIS REALLY DEMONSTRATES TWO POINTS. THE FIRST IS THAT THE COMPANIES HAD BEEN ENCOURAGED AND THE SURGEON GENERAL WAS CONTINUING TO ENCOURAGE THE COMPANIES TO DECREASE THE TAR AND NICOTINE YIELDS.

BUT IT ALSO DEMONSTRATES THAT THERE WAS A RECOGNITION OF THE POSSIBILITY THAT SMOKERS WOULD CHANGE THEIR SMOKING PATTERNS. THEY WILL ENGAGE IN, AS HAS BEEN DESCRIBED FOR YOU, WHAT IS COMPENSATORY SMOKING WHEN THEY SMOKED THE LIGHTER CIGARETTE, AS MR. HARDY SUGGESTED TO YOU.

THAT'S A SUBJECT THAT IS STILL BEING STUDIED. IT APPEARS THAT SOME SMOKERS PROBABLY DO CHANGE THEIR SMOKING PATTERN TO SOME EXTENT.

HOWEVER, IT APPEARS THAT THEY DON'T COMPLETELY COMPENSATE, THAT THEY STILL GET LESS TAR AND NICOTINE THAN THEY WOULD HAVE FROM A FULL-FLAVORED BRAND, AND ALSO THAT THE COMPENSATION THAT THEY DO IS RELATIVELY SHORT-LIVED.

THEY USUALLY FALL BACK TO THE SAME NUMBER OF CIGARETTES THAT THEY WERE SMOKING PREVIOUSLY WHEN THEY WERE SMOKING A BRAND THAT DELIVERED MORE TAR AND NICOTINE.

AND REALLY, MRS. WHITELEY IS A PRETTY GOOD EXAMPLE OF THAT. YOU'LL SEE FROM HER MEDICAL RECORDS THROUGHOUT THE '90S THAT THERE SIMPLY IS NOT CONSISTENT EVIDENCE THAT HER SMOKING RATE WENT UP AFTER SHE SWITCHED TO CAMEL LIGHTS, BUT SHE CONTINUED TO SMOKE SOMEWHERE BETWEEN HALF A PACK AND A PACK A DAY OF CIGARETTES UP UNTIL THE TIME THAT SHE STOPPED.

BUT INSTEAD, I WANT TO ADDRESS WHAT THE EVIDENCE

0701

WILL BE IN A LITTLE MORE DETAIL ON ONE OF THE CLAIMS THAT MS. CHABER MADE THIS MORNING.

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Source: https://www.industrydocuments.ucsf.edu/docs/kpxl0001

YOU HEARD HER TELL YOU THAT THESE COMPANIES HAVE MANIPULATED THE CIGARETTE TO INCREASE THE AMOUNT OF FREE NICOTINE CONTAINED IN CIGARETTE SMOKE.

LET ME FLIP BACK TO A CHART THAT PERHAPS CAN ILLUSTRATE THIS. IT'S BEEN KNOWN FOR A LONG TIME THAT, AS TOBACCO COMES IN FROM THE FIELD, THERE'S APPROXIMATELY A RATIO OF 10-TO-1 IN TAR YIELD THAN NICOTINE YIELD FOR CIGARETTES.

AND REALLY, YOU CAN SEE FROM THE DIFFERENT VERSIONS OF CAMEL THAT WERE SOLD OVER TIME THAT THAT'S APPROXIMATELY CORRECT (INDICATING).

FOR EXAMPLE, CAMEL 70 HAD ABOUT A YIELD OF 10 TIMES AS MUCH TAR AS NICOTINE, AND THE CAMEL ULTRA LIGHT 100 1990S HAD A YIELD AT 10 TIMES AS MUCH TAR AS NICOTINE.

THERE HAVE BEEN MANY PEOPLE IN THE PUBLIC HEALTH COMMUNITY, INCLUDING THE SURGEON GENERAL, THAT HAVE LONG URGED THE COMPANIES TO FIND A WAY TO BREAK THAT 10-TO-1 RATIO, TO FIND A WAY TO PRODUCE A CIGARETTE THAT YIELDED ONLY FIVE TIMES AS MUCH TAR AS NICOTINE. BETTER YET, MAYBE THREE TIMES AS MUCH TAR AS NICOTINE.

AND THE EVIDENCE WILL BE THAT THE THINKING WENT LIKE THIS. IT'S ALWAYS BEEN THOUGHT THAT THE SUBSTANCES IN CIGARETTE SMOKE THAT ARE LINKED TO CANCER RISK ARE FOUND IN THE TAR. IT'S ALSO KNOWN THAT SMOKERS WILL NOT SMOKE A CIGARETTE THAT HAS TOO LOW A YIELD OF NICOTINE, BECAUSE OF TASTE AND A VARIETY OF OTHER CHARACTERISTICS, INCLUDING THE

0702

WAY SMOKE FEELS IN YOUR MOUTH WHEN YOU SMOKE IT THAT ARE IMPARTED OR DUE TO THE PRESENCE OF NICOTINE.

SO THESE COMPANIES WERE ALWAYS URGED TO TRY TO FIND A WAY TO MAKE A CONSUMER-ACCEPTABLE PRODUCT THAT BROKE THE 10-TO-1 RATIO OF NICOTINE.

ONE OF THE THINGS THAT THE SURGEON GENERAL AND OTHER MEMBERS OF THE PUBLIC HEALTH COMMUNITY URGED THE COMPANIES TO DO WAS TO CONSIDER WHETHER ALTERING THE PH OF CIGARETTE SMOKE WHICH WOULD RESULT IN AN INCREASED YIELD OF FREE NICOTINE WOULD ACCOMPLISH THAT GOAL.

AND THE COMPANIES DID INVESTIGATE A NUMBER OF THE TECHNOLOGIES THAT MIGHT HELP THEM BREAK THAT 10-TO-1 TAR-TO-NICOTINE RATIO. IN FACT, THEY INVESTIGATED WHETHER INCREASING THE PH OF CIGARETTE SMOKE, USING AMMONIA OR OTHER PRODUCTS -- I SHOULD SAY, OTHER CHEMICALS THAT HAD A NITROGEN GROUP PRESENT THAT WOULD ALLOW THEM TO INCREASE THE PH BUT ENABLE THEM TO BREAK THAT 10-TO-1 RATIO OF AN INCREASE IN THE AMOUNT OF FREE NICOTINE, PRODUCING A PRODUCT THAT THE SURGEON GENERAL AND OTHERS COULD SPECULATE MIGHT BE A SAFER CIGARETTE PRODUCT.

REYNOLDS IN PARTICULAR WAS VERY INTERESTED IN THIS CONCEPT. FOR MANY YEARS, WINSTON BRAND HAD BEEN THE

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NO. 1 SELLING BRAND OF CIGARETTES IN THE COUNTRY. MARLBORO HAD PASSED WINSTON IN SALES AND WAS WIDENING THE GAP AND HAS CONTINUED TO DO SO FOR A LONG TIME.

SO THE SCIENTISTS IN REYNOLDS WERE INTERESTED IN ATTEMPTING TO DETERMINE: WHAT IS IT ABOUT A MARLBORO THAT MAKES IT SELL SO MUCH BETTER THAN A WINSTON?

0703

AND ONE OF THE IDEAS WAS THAT PERHAPS IT COULD BE A HIGHER PH OF CIGARETTE SMOKE AND A HIGHER YIELD OF FREE NICOTINE IN MARLBORO THAN IN WINSTON.

SO THEY INVESTIGATED ALL OF THOSE ISSUES. THEY TRIED MULTIPLE TECHNOLOGIES. HERE'S WHAT THEY FOUND OUT. THEY FOUND OUT THAT FIRST USING AMMONIA OR OTHER COMPOUNDS LIKE AMMONIA REALLY WASN'T A VERY EFFICIENT WAY TO CHANGE THE PH, ALTHOUGH IT COULD BE USED TO ALTER THE PH.

WHAT THEY FOUND OUT MORE IMPORTANTLY WAS THAT IT DIDN'T MATTER TO CONSUMERS. CONSUMERS DID NOT CARE ABOUT THE PH OF CIGARETTE SMOKE.

AND AS A RESULT, THE EVIDENCE IN THIS CASE WILL BE THAT THERE HAS BEEN NO SYSTEMATIC CHANGE IN EITHER THE PH OF CIGARETTE SMOKE OR THE AMOUNT OF FREE NICOTINE IN CIGARETTE SMOKE OVER THE YEARS.

IN FACT, YOU ARE GOING TO LEARN THAT, REALLY, THE ULTIMATE TEST FOR WHETHER A MODIFICATION OF A CIGARETTE IS SUCCESSFUL IN TERMS OF CONSUMER APPEAL IS THE MARKET SHARE THAT THAT BRAND IS ABLE TO ACHIEVE IN THE MARKET.

AND THE EVIDENCE IS GOING TO BE VERY CLEAR THAT THE SHARE IN THE MARKET THAT A CIGARETTE BRAND IS ABLE TO ACHIEVE IS NOT CORRELATED WITH EITHER THE AMOUNT OF AMMONIA USED IN BLENDING A PARTICULAR BRAND OR WITH THE SMOKE PH OR WITH THE AMOUNT OF FREE NICOTINE IN THE TOBACCO SMOKE. IT SIMPLY DOESN'T MATTER TO CONSUMERS.

YOU MIGHT HAVE NOTICED A FEW MINUTES AGO ON ONE OF THESE CHARTS THAT THE MOST DRAMATIC DECREASES IN TAR AND NICOTINE YIELD REALLY TOOK PLACE IN THE '50S, '60S AND EARLY

0704

'70S, UP THROUGH THE MID-70S PERHAPS.

BUT THERE HAS BEEN A LEVELING OFF IN TAR AND NICOTINE YIELDS SINCE THEN. ESSENTIALLY, WHAT HAPPENED IS THE COMPANIES REACHED THE LIMITS OF THE TAR AND NICOTINE YIELDS THAT COULD BE ACHIEVED AND YET MAINTAIN A CONSUMER-ACCEPTABLE CIGARETTE USING THE TYPES OF TRADITIONAL TECHNOLOGY THAT I DESCRIBED FOR YOU EARLIER, SUCH AS FILTERS, EXPANDED TOBACCO, RECONSTITUTED TOBACCO, ETCETERA. THEY REALLY COULDN'T MAKE ANY FURTHER PROGRESS ON DECREASING TAR AND NICOTINE YIELDS.

BUT THEY DIDN'T STOP THERE. INSTEAD, WHAT THE COMPANIES BEGAN DOING WERE SPENDING HUGE AMOUNTS OF MONEY TO

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DEVELOP AND EVALUATE ALTERNATIVE CIGARETTE BRAND DESIGNS.

YOU HEARD MR. HARDY TALK A FEW MOMENTS AGO ABOUT THE PREMIER AND ECLIPSE CIGARETTE BRAND DESIGNS, WHICH ARE TWO OF THE CIGARETTES THAT WERE DEVELOPED BY THE R.J. REYNOLDS TOBACCO COMPANY.

WE ARE GOING TO BRING YOU A CIGARETTE DESIGNER THAT SPENT A GREAT DEAL OF TIME WORKING ON THE PREMIER AND ECLIPSE CIGARETTES, BUT I WILL BRIEFLY DESCRIBE FOR YOU THE TYPES OF CHANGES THAT WERE MADE.

THIS IS A MOCK-UP OF THE PREMIER CIGARETTE (INDICATING). WHAT YOU MAY NOTICE IS THAT THERE IS A CARBON HEATING ELEMENT AT THE END OF THE CIGARETTE. THAT'S WHAT IS ACTUALLY LIT WHEN CIGARETTE IS SMOKED. THERE IS NO TOBACCO IN THE CIGARETTE THAT BURNS WHEN YOU SMOKE THE CIGARETTE.

WHEN A SMOKER IS DONE WITH THE CIGARETTE, THE PRODUCT IS THE SAME LENGTH IT WAS WHEN THEY BEGAN SMOKING

0705

IT.

WHAT HAPPENS IS THAT WHEN THIS CARBON HEATING ELEMENT IS LIT AND THE SMOKER DRAWS ON THE MOUTH END OF THE CIGARETTE, THE HOT AIR THAT PASSES THROUGH THE CIGARETTE PASSES OVER TOBACCO PAPER, FILTERS AND OTHER ADDITIVES AND FLAVORS THAT ARE INCLUDED IN THE CIGARETTE, AND THAT PROCESS IMPARTS THE TASTE AND FEEL TO THE CIGARETTE SMOKER.

WHAT IS MORE IMPORTANT TO TAKE A LOOK AT IS THE DRAMATIC CHANGES THAT THE COMPANY WAS ABLE TO ACHIEVE IN CIGARETTE SMOKE WITH THIS PRODUCT.

YOU HAVE HEARD THE TODAY ON SEVERAL OCCASIONS ABOUT NITROSAMINES. THESE FOUR SUBSTANCES, NNN, NNK, NAT AND NAB, ARE WHAT ARE KNOWN AS TOBACCO-SPECIFIC NITROSAMINES. THAT IS, NITROSAMINES THAT ARE FOUND ONLY IN TOBACCO.

THIS CHART ILLUSTRATES THE YIELD OF THOSE COMPOUNDS IN A PREMIER CIGARETTE VERSUS A 1R4F CIGARETTE, WHICH IS A STANDARD REFERENCE CIGARETTE THAT BURNS TOBACCO.

AND WHAT YOU SEE IS THAT FOR ALL OF THE NITROSAMINES, THE DECREASES WERE OVER 90 PERCENT. FOR SOME OF THEM, THEY WERE ROUGHLY 97 PERCENT.

YOU ALSO HEARD MS. CHABER MENTION TO YOU A GROUP OF COMPOUNDS KNOWN AS POLYCYCLIC AROMATIC HYDROCARBONS. BENZO(A)PYRENE IS ONE OF THOSE COMPOUNDS THAT IS MOST PROMINENT IN CIGARETTE SMOKE. THE BENZO(A)PYRENE IN THE PREMIER CIGARETTE IS REDUCED BY OVER 99 PERCENT THAN THAT FOUND IN PRODUCTS THAT BURN TOBACCO.

WELL, R.J. REYNOLDS SPENT OVER ONE BILLION

0706

DOLLARS TO DEVELOP, MANUFACTURE AND ATTEMPT TO MARKET THIS CIGARETTE. THE COMPANY HAD TO INVENT MANY OF THE MACHINES THAT ARE USED TO MAKE VARIOUS COMPONENTS OF THIS CIGARETTE.

AND WHEN IT WAS INTRODUCED INTO THE MARKETPLACE,

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IT FLOPPED. CONSUMERS DIDN'T LIKE IT. THE PUBLIC HEALTH COMMUNITY ATTACKED IT, AND IT FLOPPED.

BUT THE COMPANY DIDN'T STOP THERE. WHAT IT DID IS BEGIN WORKING ON THE NEXT VARIATION OF THIS CIGARETTE, WHICH IS KNOWN AS THE ECLIPSE CIGARETTE. THE ECLIPSE CIGARETTE THAT YOU WILL HEAR ABOUT DURING THE TRIAL IS A VERY SIMILAR CIGARETTE.

HOWEVER, SOME TOBACCO IS BURNED WHILE THE CIGARETTE IS SMOKED, BUT IT STILL ACHIEVES SOME FAIRLY REMARKABLE DECREASES IN YIELDS, BUT NOT OF THE SAME ORDER AS THE PREMIER CIGARETTE.

MR. HARDY TOLD YOU ALSO, I BELIEVE, THAT REYNOLDS IS NOT THE ONLY COMPANY THAT IS TESTING AND INVESTING THESE HUGE AMOUNTS OF MONEY, TIME AND RESOURCES TO TRY TO DEVELOP ALTERNATIVE CIGARETTE PRODUCTS.

PHILIP MORRIS HAS BEEN DOING THE SAME. YOU ARE GOING TO HEAR ABOUT THE ACCORD AND NEXT PRODUCTS THAT PHILIP MORRIS HAS WORKED ON AS YOU LISTEN TO THE EVIDENCE IN THIS TRIAL.

YOU HEARD DISCUSSED TODAY -- AND I'M NOT GOING TO REPEAT WHAT MR. HARDY SAID -- ABOUT WHETHER ADDITIVES ARE THOUGHT TO PLAY ANY ROLE IN THE HEALTH RISKS OF CIGARETTE SMOKING, BUT WHAT HE DIDN'T TELL YOU IS THIS: THE EVIDENCE IS GOING TO SHOW THAT THE QUESTION OF WHETHER ADDITIVES

0707

INCREASE THE RISK OF CIGARETTE SMOKING IS NOT A NEW QUESTION.

IN 1986, CONGRESS BEGAN REQUIRING THE CIGARETTE MANUFACTURERS TO TURN OVER TO DHHS THE COMPREHENSIVE LIST OF ADDITIVES THAT ARE USED IN CIGARETTES. DHHS IS THE PART OF THE FEDERAL GOVERNMENT THAT THE SURGEON GENERAL WORKS FOR.

WHEN DHHS RECEIVES THAT LIST, THEY ARE REQUIRED AS A MATTER OF LAW TO FORWARD TO CONGRESS A REPORT ON ANY ADDITIVE THAT THE SURGEON GENERAL'S OFFICE THINKS MIGHT BE INCREASING THE RISK OF CIGARETTE SMOKING.

AND IN THE 13 OR 14 YEARS SINCE THAT LAW WAS PASSED IN 1986, DHHS HAS NEVER MADE A SINGLE REPORT TO CONGRESS ABOUT AN ADDITIVE IN CIGARETTE SMOKE THAT THEY FOUND TO BE A PROBLEM.

I'LL PASS THAT ONE IN THE INTEREST OF TIME (INDICATING).

WITH RESPECT TO THE MODIFICATIONS OF CIGARETTES, THE EVIDENCE IN THIS CASE WILL BE THAT THERE ARE MANY PEOPLE IN OUR SOCIETY WHO WOULD LIKE TO BAN CIGARETTES, BUT THAT SOCIETY HAS CHOSEN NOT TO DO SO. ADULT SMOKERS ARE FREE TO CONTINUE SMOKE.

MR. BROWN: YOUR HONOR, THIS IS ARGUMENT.

MR. FURR: I WILL GET PAST THIS.

THE COURT: I THINK IT IS.

MR. FURR: THE EVIDENCE WILL BE THAT PHILIP MORRIS AND R.J. REYNOLDS CONTINUED WORKING EVERY DAY TO

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TRY TO MAKE CIGARETTES SAFER FOR ADULT SMOKERS WHO CHOOSE TO CONTINUE SMOKING CIGARETTES.

0708

TURNING TO ANOTHER TOPIC. I'M GOING TO TALK TO YOU NEXT ABOUT NICOTINE AND SMOKING BEHAVIOR AND MRS. WHITELEY'S ADDITIONS. AND AGAIN, I'M GOING TO TALK TO YOU ABOUT MRS. WHITELEY'S ADDICTIONS, NOT TO EMBARRASS HER, BECAUSE IT'S IMPORTANT IN UNDERSTANDING HER SMOKING BEHAVIOR.

MRS. WHITELEY WAS ALMOST CERTAINLY ADDICTED TO ALCOHOL AT ONE POINT IN HER LIFE. SHE ALSO, AT DIFFERENT POINTS IN HER LIFE, USED OTHER SUBSTANCES THAT ARE THOUGHT TO BE ADDICTING, SUCH AS MARIJUANA, COCAINE, LSD AND CIGARETTE SMOKING.

MRS. WHITELEY WAS ABLE TO STOP DRINKING ALCOHOL AND SHE WAS ABLE TO STOP USING MARIJUANA AND COCAINE AND LSD WITHOUT ANY MEDICAL ASSISTANCE WHATSOEVER.

AND THE EVIDENCE WILL BE THAT, HAD SHE REALLY WANTED TO DO SO, SHE WOULD HAVE BEEN ABLE TO STOP SMOKING CIGARETTES ALSO.

NOW, NOTWITHSTANDING WHAT MS. CHABER TOLD YOU THIS MORNING ABOUT THE POSITION THAT R.J. REYNOLDS AND PHILIP MORRIS TAKE ON ADDICTION, THE EVIDENCE WILL BE THAT PHILIP MORRIS AND R.J. REYNOLDS DO NOT DISPUTE THAT NICOTINE AND CIGARETTES ARE ADDICTING AS THOSE TERMS ARE USED IN THE 1988 SURGEON GENERAL REPORT.

THERE IS NO DISPUTE THAT NICOTINE AND CIGARETTES MEET THAT DEFINITION OF ADDICTION. HOWEVER, THE EVIDENCE WILL ALSO BE THAT THE QUESTION OF WHETHER NICOTINE IS ADDICTIVE IS DIFFERENT FROM AND HAS A DIFFERENT ANSWER THAN THE QUESTION OF WHETHER MRS. WHITELEY COULD HAVE STOPPED

0709

SMOKING CIGARETTES.

SMOKERS CAN AND DO STOP SMOKING CIGARETTES EVERY DAY. I'M AFRAID THIS IS GOING TO BE A LITTLE LABORIOUS, BUT TO UNDERSTAND THE EVIDENCE IN THIS CASE ON SMOKING BEHAVIOR AND ADDICTION AND POSITIONS THAT THE COMPANIES HAVE TAKEN OVER TIME ON WHETHER SMOKING IS ADDICTIVE, YOU NEED TO UNDERSTAND WHAT THE TERM "ADDICTION" MEANS.

AND IT IS SOMEWHAT DIFFICULT, BECAUSE THAT'S A TERM WHOSE MEANING HAS CHANGED IN A VERY DRAMATIC FASHION OVER THE YEARS. ONCE, THERE WAS A VERY PRECISE DEFINITION OF ADDICTION, AND SCIENTISTS RESERVED THE TERM "ADDICTION" TO DESCRIBE THE QUALITIES OF SUBSTANCES SUCH AS ALCOHOL AND HARD DRUGS SUCH AS HEROIN OR BARBITURATES.

THAT'S CHANGED OVER TIME. THE TERM "ADDICTION" HAS BEEN REDEFINED. THERE IS A VERY IMPRECISE DEFINITION OF "ADDICTION" TODAY. AND AS A RESULT, THERE ARE A NUMBER OF ACTIVITIES THAT MEET THE DEFINITION OF ADDICTION IN THE SAME

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WAY THAT SMOKING AND NICOTINE DO.

FOR EXAMPLE, OVEREATING, DRINKING CAFFEINE EXCESSIVELY, OVEREXERCISE, EVEN ENGAGING EXCESSIVELY IN A PERSONAL RELATIONSHIP.

THE SURGEON GENERAL -- I SHOULD SAY A MAN NAMED KOOP, WHO WAS THE GENERAL SURGEON IN 1988 WHEN THE REPORT WAS RELEASED THAT DETERMINED THAT NICOTINE AND SMOKING SHOULD BE IDENTIFIED AS ADDICTIVE, HAS RECENTLY ALSO STATED THAT THE EXCESSIVE PLAYING OF VIDEO GAMES BY CHILDREN IS ADDICTIVE.

SO THE DEFINITION HAS CHANGED OVER TIME. I SPENT

0710

A FEW MINUTES DESCRIBING FOR YOU HOW THAT DEFINITION HAS CHANGED. YOU'VE HEARD A COUPLE OF TIMES TODAY ABOUT THE 1964 SURGEON GENERAL'S REPORT.

THAT WAS A LANDMARK REPORT, AND IT WAS THE REPORT IN WHICH THE SURGEON GENERAL REPORTED THAT SMOKING IS CAUSING LUNG CANCER.

BUT THAT WASN'T THE ONLY THING THAT THE SURGEON GENERAL DID IN 1964. WHEN THE SURGEON GENERAL RELEASED THAT REPORT, HE ALSO EVALUATED WHETHER NICOTINE AND CIGARETTES WERE ADDICTIVE. AND USING THE CLASSICAL DEFINITION OF "ADDICTION" THAT ALL OF SCIENTISTS AT THAT TIME WERE USING, THE SURGEON GENERAL FOUND THAT, NO, SMOKING AND NICOTINE ARE NOT ADDICTIVE. THEY ARE BETTER DESCRIBED AS A HABIT OR HABITUATING.

I WANT TO WALK YOU THROUGH THE REASONING PROCESS THAT THE SURGEON GENERAL USED AT THAT TIME. IN '64, THE SURGEON GENERAL USED A NUMBER OF CRITERIA TO EVALUATE THE CLASSICAL -- I SHOULD SAY THE CLASSICAL DEFINITION OF "ADDICTION" REQUIRED THAT A SUBSTANCE SATISFY A NUMBER OF CRITERIA BEFORE THAT SUBSTANCE WOULD BE LABELED AS ADDICTIVE.

FOR EXAMPLE, THE SURGEON GENERAL EXAMINED WHETHER NICOTINE WAS INTOXICATING; IN OTHER WORDS, WHETHER THE USE OF NICOTINE WOULD AFFECT THE USER'S ABILITY TO FUNCTION AT HOME OR AT WORK OR IN A SOCIAL ENVIRONMENT.

THE SURGEON GENERAL EXAMINED WHETHER NICOTINE CREATED AN OVERPOWERING DESIRE TO CONTINUE TAKING THE DRUG AND OBTAIN IT BY ANY MEANS.

0711

THE EVIDENCE WILL BE THAT WHAT THIS ESSENTIALLY MEANS IS WHETHER OR NOT THE USER OF A SUBSTANCE IS WILLING TO ENGAGE IN CRIMINAL BEHAVIOR TO OBTAIN THE MONEY THAT THEY NEED TO BUY THE SUBSTANCE.

THE SURGEON GENERAL EXAMINED WHETHER OR NOT SMOKERS HAD A TENDENCY TO INCREASE THE DOSE. AS YOU MAY KNOW, DRUG ADDICTS WILL OFTEN CONTINUE INCREASING THE DOSE OF DRUGS THAT THEY USE IN AN EFFORT TO DUPLICATE OR OBTAIN THE HIGHS THAT THEY ACHIEVE WHEN THEY INITIALLY BEGAN USING A DRUG, AND THEY CONTINUE DOING THAT UNTIL SOMETIMES, UNFORTUNATELY, THEY ACTUALLY OVERDOSE.

THE SURGEON GENERAL ALSO EXAMINED WHETHER OR

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NOT ABSTINENCE OR STOPPING USING A SUBSTANCE WOULD PRODUCE SEVERE OR EVEN LIFE-THREATENING WITHDRAWAL SYMPTOMS.

USERS OF ALCOHOL AND HEROIN, FOR EXAMPLE, WHEN THEY STOP USING THOSE DRUGS, MAY EXPERIENCE HALLUCINATIONS. THEY MAY EXPERIENCE CONVULSIONS. THEY MAY HAVE DT'S. AND AGAIN, VERY UNFORTUNATELY, SOMETIMES THEY EVEN DIE IN ATTEMPTING TO WITHDRAW FROM THOSE TYPES OF DRUGS.

FINALLY, THE SURGEON GENERAL EXAMINED WHETHER OR NOT USE OF THE SUBSTANCE HARMS BOTH THE INDIVIDUAL AND SOCIETY. WHAT THAT CRITERIA MEANS, THE EVIDENCE WILL BE, IS THAT OFTENTIMES, DRUG ADDICTS WILL ABUSE OR EVEN IMPOVERISH THEIR FAMILIES IN THEIR EFFORT TO CONTINUE TAKING THE DRUG.

WHEN THE SURGEON GENERAL APPLIED THESE CRITERIA TO NICOTINE, OBVIOUS DIFFERENCES WERE FOUND.

NICOTINE IS RELAXING AND, PARADOXICALLY, FOR SOME PEOPLE, THEY REPORT THAT NICOTINE IS ENERGIZING, HELPS THEM

0712

CONCENTRATE OR FOCUS.

ONE THING FOR SURE IS THE EVIDENCE WILL BE IT'S NOT INTOXICATING. THE SURGEON GENERAL FOUND THAT SMOKERS DO NOT COMMIT CRIMES TO OBTAIN THE MONEY TO BUY CIGARETTES. THEY DON'T ROB THE CORNER STORE. THEY DON'T PROSTITUTE THEMSELVES TO OBTAIN MONEY TO BUY CIGARETTES. IT'S DIFFERENT THAN HEROIN, COCAINE AND ALCOHOL IN THAT WAY.

THE SURGEON GENERAL FOUND THAT SMOKERS DO TEND TO INCREASE THEIR DOSE, BUT WHAT THEY DO IS THEY CONTINUE INCREASING THE AMOUNT THEY SMOKE UNTIL THEY REACH ABOUT A PACK A DAY AND THEN THEY LEVEL OFF. THEY DON'T CONTINUE INCREASING UNTIL THEY OVERDOSE.

THE SURGEON GENERAL FOUND THAT NICOTINE DOES -- WHEN SOMEONE STOPS SMOKING, SMOKERS SOMETIMES EXPERIENCE WITHDRAWAL SYMPTOMS. BUT THE TYPES OF SYMPTOMS THAT THEY EXPERIENCE, FIRST OF ALL, ARE SHORT-LIVED AND TRANSIENT.

BUT SECOND, THEY EXPERIENCE THINGS LIKE ANXIETY OR RESTLESSNESS OR DIFFICULTY CONCENTRATING. THEY OFTEN EXPERIENCE OR REPORT A CONTINUED CRAVING FOR ANOTHER CIGARETTE WHEN THEY STOP SMOKING. WHAT DOESN'T HAPPEN IS THEY DON'T EXPERIENCE LIFE-THREATENING WITHDRAWAL SYMPTOMS.

AND OF COURSE, SMOKERS DO NOT, AS I SAID, COMMIT CRIMES TO OBTAIN THE DRUG, TO OBTAIN CIGARETTES.

SO USING THIS DEFINITION, THE SURGEON GENERAL FOUND THAT SMOKING WAS BETTER DESCRIBED AS A HABIT THAN AS AN ADDICTION.

NOW, THE SURGEON GENERAL UNDERSTOOD SMOKING BEHAVIOR IN 1964. THE EVIDENCE WILL BE THAT THIS FINDING OF

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SMOKING BEING BETTER DESCRIBED AS A HABIT THAN AS AN ADDICTION DID NOT OCCUR BECAUSE OF ANY LACK OF UNDERSTANDING OF SMOKING BEHAVIOR.

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THE SURGEON GENERAL KNEW IN 1964 THAT SMOKING -- THAT SOME SMOKERS SMOKED IMPULSIVELY AND THE SURGEON GENERAL KNEW IN 1964 THAT SOME SMOKERS EXPERIENCED SYMPTOMS WHEN THEY ATTEMPTED TO QUIT.

THE SURGEON GENERAL KNEW THAT SMOKING CAN CAUSE A CHANGE IN MOODS OR THE WAY YOU FEEL, ALTHOUGH IT WAS NOT INTOXICATING. THE SURGEON GENERAL KNEW IN 1964 THAT NICOTINE IS A PHARMACOLOGICALLY ACTIVE SUBSTANCE, AND THAT FOR A VARIETY OF REASONS, SMOKERS WILL NOT SMOKE A CIGARETTE WITHOUT NICOTINE.

BUT DESPITE ALL THAT KNOWLEDGE, THE SURGEON GENERAL FOUND IN 1964 THAT DESPITE ALL THAT KNOWLEDGE, DESPITE MEDICAL AND SCIENTIFIC TERMINOLOGY, THE PRACTICE OF SMOKING SHOULD BE LABELED HABITUATION TO DISTINGUISH IT CLEARLY FROM ADDICTION, SINCE THE BIOLOGICAL EFFECTS OF TOBACCO, LIKE COFFEE AND OTHER CAFFEINE-CONTAINING BEVERAGES, BETEL MORSEL CHEWING AND THE LIKE ARE NOT COMPARABLE TO THOSE PRODUCED BY MORPHINE, ALCOHOL OR HABITUATION IN MANY OTHER POTENT AND ADDICTING DRUGS.

THERE WILL BE NO DISPUTE IN THIS CASE THAT IF THESE CRITERIA WERE APPLIED TO CIGARETTES AND NICOTINE TODAY, THAT CIGARETTES WOULD STILL BE LABELED AS A HABIT AND NOT AN ADDICTION. AND IN FACT, THE SURGEON GENERAL NEVER DESCRIBED SMOKING OR NICOTINE AS AN ADDICTION BETWEEN 1964 AND 1988.

BUT THEN SOMETHING CHANGED. THE EVIDENCE WILL BE THAT THERE WERE PEOPLE IN THE SURGEON GENERAL'S OFFICE, INCLUDING WITNESSES THAT YOU MAY HEAR FROM IN THIS CASE, THAT VERY MUCH WANTED TO RECLASSIFY SMOKING AS AN ADDICTION INSTEAD OF AS A HABIT.

AND IF THOSE WITNESSES TESTIFY HERE, THE EVIDENCE WILL BE THAT THEY WANT TO CLASSIFY SMOKING AS AN ADDICTION INSTEAD OF A HABIT BECAUSE THEY THOUGHT IT WOULD AID THEM IN THEIR EFFORTS TO CONVINCE THE FEDERAL GOVERNMENT TO FURTHER REGULATE SMOKING, AND BECAUSE THEY THOUGHT THAT THAT WOULD BE AN EMOTIONAL PLEA TO BRING IN JURIES IN CASES LIKE THIS.

SO BECAUSE SMOKING BEHAVIOR HAD NOT CHANGED AND BECAUSE SMOKING BEHAVIOR DID NOT MEET THE DEFINITION OF ADDICTION, WHAT THEY DID WAS CHANGE THE DEFINITION. THEY WENT IN AND THEY DROPPED ALL THE CRITERIA FROM THE '64 SURGEON GENERAL'S REPORT THAT SMOKING BEHAVIOR DID NOT MEET, AND INSTEAD, THEY SUBSTITUTED NEW CRITERIA FOR THE DEFINITION OF "ADDICTION" THAT IT WAS ALREADY KNOWN THAT SMOKING BEHAVIOR DID MEET, AND THIS WAS A DEFINITION ADOPTED SOLELY FOR THE PURPOSE OF EVALUATING WHETHER SMOKING SHOULD BE RECLASSIFIED AS AN ADDICTION.

SO WHEN THOSE CHANGES WERE MADE AND WHEN THE

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NEW DEFINITION WAS ADOPTED, IT WAS ESSENTIALLY THE DESIGNATION HAD BEEN MADE BECAUSE IT WAS ALREADY KNOWN THAT SMOKING WOULD SATISFY THE NEW DEFINITION.

I WILL TRY TO GO THROUGH THIS VERY QUICKLY, BUT THE DEFINITION THAT THE SURGEON GENERAL ADOPTED IN 1988 WAS AS FOLLOWS: "A SUBSTANCE IS ADDICTIVE IF IT IS

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PSYCHOACTIVE, IF IT IS USED COMPULSIVELY AND IF IT IS REINFORCING."

PSYCHOACTIVES, BY THE WAY, REPLACED INTOXICATION. ALL "PSYCHOACTIVE" MEANS IS THAT A SUBSTANCE HAS THE ABILITY TO ALTER ONE'S MOOD OR OUTLOOK.

THERE IS NO QUESTION THAT NICOTINE SATISFIES THE CRITERION OF PSYCHOACTIVITY. BUT THEN AGAIN, THE EVIDENCE WILL BE THAT ALMOST EVERYTHING WE INGEST, INCLUDING THINGS SUCH AS CAFFEINE AND VARIOUS FOODS, ARE PSYCHOACTIVE.

THE SECOND CRITERION, "USED COMPULSIVELY," WAS SUBSTITUTED FOR "AN OVERPOWERING DESIRE TO CONTINUE TAKING THE DRUG AND OBTAIN IT BY MY MEANS OR A TENDENCY TO INCREASE THE DOSE."

ALL "USED COMPULSIVELY" MEANS IS THAT THE USER WILL CONTINUE USING THE SUBSTANCE WHEN THERE IS A GOOD REASON NOT TO. FOR EXAMPLE, SMOKERS WILL CONTINUE --

MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT. THIS IS JUST ARGUMENT, WHAT COUNSEL THINKS THEY MEAN, APPARENTLY.

THE COURT: ARE YOU SAYING THERE IS GOING TO BE EVIDENCE THAT THAT IS WHAT --

MR. FURR: YES, YOUR HONOR.

THE COURT: LET ME JUST GET THE WORDS OUT OF MY MOUTH. ARE YOU TELLING US THERE IS GOING TO BE EVIDENCE THAT THAT IS WHAT THESE WORDS MEANT AS USED IN THE 1988 SURGEON GENERAL'S REPORT OR NOT?

MR. FURR: YES, YOUR HONOR, I AM.

THE COURT: OKAY. THEN YOU CAN PROCEED, IF THAT

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IS YOUR EXPECTATION.

MR. FURR: THE EVIDENCE IN THIS CASE WILL BE CLEAR THAT IT'S USED IN ALSO THE 1988 SURGEON GENERAL'S REPORT. AND AS WILL BE EXPLAINED BY PLAINTIFFS' OWN ADDICTION EXPERT, DR. BENOWITZ, ALL THAT "USED COMPULSIVELY" MEANS IN THE CONTEXT OF SMOKING IS THAT A SMOKER WILL CONTINUE SMOKING EVEN WHEN THERE IS A GOOD REASON NOT TO, SUCH AS WHEN THEY HAVE BEEN WARNED OF THE HEALTH RISKS OF DOING SO. THAT WILL BE DR. BENOWITZ' TESTIMONY.

THE THIRD CRITERION IS REINFORCING. ALL THAT "REINFORCING" MEANS, AS DR. BENOWITZ WILL EXPLAIN, IS THAT A PERSON USES THE SUBSTANCE FOR THE EFFECTS THAT ARE OBTAINED FROM THE SUBSTANCE. IT'S ESSENTIALLY A MEANINGLESS CRITERION THAT APPLIES TO VIRTUALLY EVERYTHING THAT HUMANS DO OR USE REPEATEDLY.

SO AGAIN, DESPITE WHAT MS. CHABER SUGGESTED, THERE WILL BE NO DISPUTE FROM THESE COMPANIES. THERE WILL

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BE NO ARGUMENT THAT IF THIS IS THE DEFINITION OF ADDICTION (INDICATING) THAT ONE WANTS TO USE, THAT NICOTINE AND SMOKING SATISFY THIS DEFINITION.

BUT TO PUT IT IN CONTEXT, THE EVIDENCE WILL ALSO BE THAT ALL THOSE ACTIVITIES THAT I LISTED FOR YOU BEFORE, SUCH AS OVEREATING OR DRINKING COFFEE EXCESSIVELY ALSO SATISFY THIS DEFINITION (INDICATING).

LET ME TALK TO YOU FOR A MOMENT ABOUT WHAT THIS DEFINITION OF ADDICTION DOES NOT MEAN. IT DOES NOT MEAN THAT SMOKERS CAN'T QUIT. AS MR. HARDY TOLD YOU, THERE ARE MORE FORMER SMOKERS IN THE UNITED STATES THAN THERE ARE

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CURRENT SMOKERS. MORE THAN A MILLION AND A HALF PEOPLE QUIT SMOKING EVERY YEAR.

NOW, DR. BENOWITZ AND OTHER WITNESSES OF THE PLAINTIFFS ARE GOING TO TELL YOU THAT THEY BELIEVE THAT OVER 90 PERCENT OF CIGARETTE SMOKERS ARE ADDICTED. BUT THEY'RE ALSO GOING TO TELL YOU THAT AMONG SMOKERS WHO QUIT SMOKING CIGARETTES, OVER 90 PERCENT OF THEM ARE ABLE TO QUIT IN THE SAME WAY THAT MRS. WHITELEY DID; THAT IS, WITH NO MEDICAL ASSISTANCE, WITH NO TYPE OF COUNSELING FROM ANY MEDICAL PROFESSIONAL, WITH NO NICOTINE REPLACEMENTS, WITH NO PATCH, WITH NO GUM, WITH NO ZYBAN. THEY SIMPLY MAKE UP THEIR MIND TO QUIT THEY, PUT THEIR CIGARETTES DOWN AND THEY STOP SMOKING.

LET ME BACK UP. I'VE SPENT PROBABLY TOO MUCH TIME DISCUSSING WHAT THE TERM "ADDICTION" DOES AND DOESN'T MEAN. IN FACT, THE EVIDENCE WILL BE IT REALLY DOESN'T MATTER WHETHER YOU DESCRIBE SMOKING AS AN ADDICTION OR A DEPENDENCY OR A HABIT. SMOKING BEHAVIOR IS WHAT IT IS. AND SMOKERS CAN QUIT.

THE EVIDENCE WILL BE THAT THE TWO MOST IMPORTANT FACTORS IN WHETHER OR NOT A SMOKER WILL BE ABLE TO QUIT IS WHETHER OR NOT THAT SMOKER IS MOTIVATED TO QUIT AND WHETHER OR NOT THAT SMOKER IS PERSISTENT IN THEIR EFFORTS TO QUIT.

THE AVERAGE SMOKER REQUIRES APPROXIMATELY FOUR TO FIVE EFFORTS BEFORE THEY SUCCESSFULLY QUIT. DR. BENOWITZ, PLAINTIFFS' ADDICTION EXPERT, WILL TELL YOU THAT HAD MRS. WHITELEY MADE FOUR TO FIVE SERIOUS QUIT ATTEMPTS IN AN EFFORT TO QUIT SMOKING, THAT MORE LIKELY THAN NOT SHE WOULD

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HAVE BEEN SUCCESSFUL IN STOPPING SMOKING EARLIER.

DESPITE THE FACT THAT NICOTINE MEETS THE DEFINITION OF ADDICTION THAT THE SURGEON GENERAL USED IN 1988, THERE IS A VERY GOOD REASONS THAT EXPLAIN WHY SMOKERS, EVEN THOSE THAT WOULD BE CLASSIFIED AS ADDICTED SMOKERS, ARE ABLE TO QUIT WHEN THEY DECIDE THAT THEY REALLY WANT TO DO SO.

FIRST, NICOTINE DOES NOT INTERFERE WITH A

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SMOKER'S ABILITY TO RECEIVE AND UNDERSTAND INFORMATION ABOUT SMOKING AND HEALTH. IT DOESN'T PREVENT THEM FROM READING AND UNDERSTANDING THE WARNINGS ON THE SIDE OF THE PACK. IT DOESN'T PREVENT THEM FROM HEARING AND UNDERSTANDINGS THINGS THAT THEIR DOCTORS, THAT THEIR PARENTS, THAT THEIR SIBLINGS AND THAT THEIR FRIENDS TELL THEM ABOUT SMOKING AND HEALTH.

NICOTINE DOES NOT PREVENT SOMEONE FROM DECIDING AND DEVELOPING A PLAN FOR QUITTING. NICOTINE DOES NOT PREVENT SOMEONE FROM FOLLOWING THROUGH ON THEIR PLAN TO QUIT, IF THEY REALLY WANT TO QUIT.

THE EVIDENCE WILL BE THAT FOR SOME PEOPLE, QUITTING SMOKING CAN BE DIFFICULT. SOME PEOPLE DO EXPERIENCE THE TYPE OF SYMPTOMS THAT I DESCRIBED EARLIER. HOWEVER, THE EVIDENCE WILL ALSO BE THAT THOSE SYMPTOMS PEAK WITHIN TWO TO THREE DAYS AFTER SOMEONE STOPS SMOKING. AND BY THE END OF ABOUT TWO WEEKS, VIRTUALLY ALL OF THOSE SYMPTOMS ARE GONE. JUST LIKE THE NICOTINE IS GONE FROM THE BODY WITHIN TWO WEEKS, EXCEPT PERHAPS FOR THE SYMPTOM OF CONTINUING TO WANT OR TO CRAVE A CIGARETTE, WHICH FOR MANY PEOPLE CAN LAST FOR A LONG TIME.

THE EVIDENCE IN THIS CASE ABOUT STOPPING SMOKING WILL BE REALLY VERY SIMPLE. THE EVIDENCE WILL BE THAT SMOKERS LIKE MRS. WHITELEY CAN STOP SMOKING CIGARETTES WHEN THEIR DESIRE TO STOP SMOKING CIGARETTES IS GREATER THAN THEIR DESIRE TO CONTINUE SMOKING CIGARETTES. NOW, IT MAY TAKE MORE THAN ONE SERIOUS QUIT ATTEMPT. BUT IF THEY MAKE THOSE EFFORTS AND THEY REALLY WANT TO STOP SMOKING, THEY WILL BE ABLE TO.

IN FACT, I SHOULD ELABORATE JUST A BIT ON THIS CONCEPT OF A SERIOUS QUIT ATTEMPT. SCIENTISTS WHO STUDY SMOKING CESSATION HAVE DEVELOPED A DEFINITION FOR A SERIOUS QUIT ATTEMPT; THAT IS, "AN EFFORT THAT REFLECTS AN INDIVIDUAL'S SERIOUS DESIRE TO QUIT SMOKING." AND WHAT THEY REQUIRE FROM A QUIT ATTEMPT BEFORE THEY LABEL IT A SERIOUS QUIT ATTEMPT IS THAT THE INDIVIDUAL STOP SMOKING FOR AT LEAST 24 HOURS.

USING THAT DEFINITION, I WILL DISCUSS WITH YOU A LITTLE MORE WHAT THE EVIDENCE WILL BE ABOUT MRS. WHITELEY'S SMOKING BEHAVIOR AND ABOUT HER QUIT ATTEMPTS. BETWEEN 1972 AND 1988, MRS. WHITELEY MADE PRECISELY ZERO SERIOUS QUIT ATTEMPTS, DESPITE HAVING BEEN WARNED BY HER DOCTOR OF THE RISK OF CONTINUING TO SMOKE TO BOTH HER AND THE CHILD. SHE SMOKED THROUGH THE FIRST PREGNANCY. SHE SIMPLY WASN'T INTERESTED IN QUITTING SMOKING.

AND THEN THE EPISODE THAT MR. BROWN DESCRIBED FOR YOU AT LEAST IN PART THIS MORNING. HER HUSBAND LEONARD DEVELOPED A COUGH THAT HIS DOCTOR TOLD HIM THAT HE THOUGHT

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WAS RELATED TO CIGARETTE SMOKING. AND MR. LEONARD --

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EXCUSE ME -- MR. WHITELEY DECIDED THAT HE WANTED TO STOP SMOKING CIGARETTES.

AND HE WENT TO MRS. WHITELEY AND ASKED HER TO HELP HIM, AND HE ASKED HER TO HELP HIM BY STOPPING SMOKING. AND MRS. WHITELEY AGREED DO SO. NOT OUT OF ANY DESIRE TO STOP SMOKING OR CONCERN FOR HER OWN HEALTH, BUT OUT OF A DESIRE TO BE SUPPORTIVE OF HER HUSBAND'S EFFORTS.

AND THEY WENT ON THIS TRIP THAT MR. BROWN DESCRIBED FOR YOU AND THEY DID QUIT SMOKING. MRS. WHITELEY QUIT FOR ABOUT TWO WEEKS. HER HUSBAND QUIT FOR LONGER. MRS. WHITELEY QUIT WITHOUT ANY MEDICAL ASSISTANCE OF ANY TYPE. NO COUNSELING, NO NICOTINE REPLACEMENT, NO PATCH, NO GUM, NO ZYBAN, NOTHING. SHE PUT THEM DOWN AND QUIT.

NOW, SHE DID EXPERIENCE SYMPTOMS, AS SHE DESCRIBES FOR US. HOWEVER, THE EVIDENCE WILL BE THAT THOSE SYMPTOMS WOULD HAVE BEEN RECEDING AND DECREASING BY THE END OF THOSE TWO WEEKS.

SHE CHOSE TO PICK UP HER CIGARETTES AGAIN. AND SHE NEVER MADE ANOTHER SERIOUS QUIT ATTEMPT UNTIL 1998, WHEN SHE WAS DIAGNOSED WITH BRONCHITIS. SHE SMOKED THROUGH HER NEXT THREE PREGNANCIES, DESPITE BEING WARNED BY HER DOCTORS IN EACH PREGNANCY THAT IT WAS RISKY FOR BOTH HER AND HER UNBORN CHILD TO CONTINUE TO DO SO. SHE TOLD HER DOCTORS THAT SHE SIMPLY WAS NOT READY TO QUIT YET.

IN 1998, WHEN SHE WAS DIAGNOSED WITH BRONCHITIS, AND SHE EXPERIENCED PAIN FROM THAT BRONCHITIS AND WAS AGAIN ADVISED TO QUIT, SHE DECIDED IT WAS TIME TO QUIT. AND SHE PUT THEM DOWN AND HASN'T SMOKED SINCE. SHE DIDN'T NEED ANY

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MEDICAL HELP. SHE DIDN'T NEED COUNSELING. SHE DIDN'T NEED ANY NICOTINE REPLACEMENT. SHE SIMPLY PUT THEM DOWN AND STOPPED SMOKING.

I BEGAN DISCUSSING THE EVIDENCE ON ADDICTION WITH YOU BY EXPLAINING TO YOU THE CHANGES THAT THE WORD "ADDICTION" HAS UNDERGONE IN ITS DEFINITION OVER TIME. THAT CHANGE IN THE WORD "ADDICTION" HAS BECOME SO IMPRECISE OVER TIME THAT IN FACT DOCTORS WHO SPECIALIZE IN TREATING PERSONS WITH SUBSTANCE ABUSE PROBLEMS NO LONGER USE THAT TERM WHEN THEY DIAGNOSE PEOPLE.

THIS IS A BOOK KNOWN AS THE DSM-IV (INDICATING). IT'S THE "DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS." IT'S THE MEDICAL TEXT THAT PSYCHIATRISTS WHO TREAT PERSONS WITH SUBSTANCE ABUSE USE TO DIAGNOSE PEOPLE THAT HAVE THOSE TYPE OF PROBLEMS. IT'S USED BY DOCTORS SUCH AS DOCTORS WHO BELONG TO THE AMERICAN SOCIETY OF ADDICTION MEDICINE. IT'S USED BY DOCTORS WHO BELONG TO THE AMERICAN

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SOCIETY OF ADDICTION PSYCHIATRISTS. IT'S ESSENTIALLY THE BIBLE OF DIAGNOSIS FOR PSYCHIATRIC MENTAL DISORDERS.

AND NOWHERE IN THIS BOOK DOES THE TERM "ADDICTION" APPEAR. AND THEY DON'T USE THAT TERM BECAUSE IT'S BECOME SUCH AN IMPRECISE TERM. INSTEAD, WHAT THEY USE TODAY IS THE TERM DEPENDENCE, SINCE YOU HEARD MS. CHABER USE THAT TERM. BUT THEY HAVE A NUMBER OF CRITERIA THAT PSYCHIATRISTS USE TO DETERMINE WHETHER OR NOT SOMEONE IS DEPENDENT UPON A SUBSTANCE.

AND HERE ARE THE TYPES OF CRITERIA THAT THEY LOOK AT. FIRST, THEY LOOK AT WHETHER THE INDIVIDUAL DEMONSTRATES

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TOLERANCE. I SHOULD BACK UP. THESE ARE THE CRITERIA THAT PSYCHIATRISTS USE TO DETERMINE WHETHER OR NOT SOMEONE IS SUBSTANCE DEPENDENT. IN ORDER TO BE DIAGNOSED AS SUBSTANCE DEPENDENT, WHAT SOMEONE HAS TO DO IS MEET AT LEAST THREE OF THESE CRITERIA.

THE EVIDENCE WILL BE THAT MRS. WHITELEY DOES NOT MEET THREE OF THESE CRITERIA. FOR EXAMPLE, THE TERM "TOLERANCE" MEANS WHETHER OR NOT SOMEONE EXHIBITS A DRAMATIC INCREASE IN THE AMOUNT OF A DRUG USED WITHIN THE PRECEDING 12-MONTH PERIOD. THERE WILL BE NO EVIDENCE THAT MRS. WHITELEY'S SMOKING EVER CHANGED IN A DRAMATIC FASHION IN A 12-MONTH PERIOD.

PSYCHIATRISTS LOOK TO DETERMINE WHETHER OR NOT SOMEONE EXPERIENCES WITHDRAWAL SYMPTOMS. OF COURSE, THAT IS A CRITERIA THAT MRS. WHITELEY DOES SATISFY BY HER OWN TESTIMONY. WHEN SHE ATTEMPTED TO STOP SMOKING IN 1988, SHE EXPERIENCED WITHDRAWAL SYMPTOMS. SO SHE SATISFIES THAT.

PSYCHIATRISTS LOOK TO DETERMINE WHETHER A SMOKER SMOKES A LARGER AMOUNT OR A LARGER NUMBER OF CIGARETTES OVER A LONGER PERIOD OF TIME THAN THEY INTENDED TO DO SO. THERE WILL BE NO EVIDENCE THAT MRS. WHITELEY SMOKED EITHER MORE CIGARETTES OR FOR A LONGER PERIOD OF TIME THAN SHE INTENDED TO DO SO.

PSYCHIATRISTS LOOK TO DETERMINE WHETHER OR NOT THERE IS A PERSISTENT DESIRE TO QUIT OR CUT DOWN BY THE SMOKER. AGAIN, THERE WILL BE NO EVIDENCE THAT MRS. WHITELEY HAD ANY TYPE OF PERSISTENT DESIRE. SHE MADE ONLY TO TWO SERIOUS QUIT ATTEMPTS BETWEEN 1972 AND 1998.

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PSYCHIATRISTS LOOK TO DETERMINE WHETHER OR NOT THE INDIVIDUAL SPENDS A GREAT DEAL OF TIME OBTAINING A SUBSTANCE. THERE WILL BE ABSOLUTELY NO EVIDENCE THAT MRS. WHITELEY HAD TO FORGO ANY TYPE OF FAMILY OR RECREATIONAL OR OCCUPATIONAL ACTIVITIES IN ORDER TO OBTAIN CIGARETTES.

PSYCHIATRISTS LOOK TO DETERMINE WHETHER OR NOT THE INDIVIDUAL CONTINUES TO USE THE PRODUCT, DESPITE

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PERSISTENT OR RECURRENT PHYSICAL OR PSYCHOLOGICAL PROBLEMS. I THINK YOU HEARD MR. BROWN TELL YOU THIS MORNING THAT THE EVIDENCE WILL BE THAT MRS. WHITELEY NEVER EXPERIENCED ANY PHYSICAL PROBLEM THAT SHE ASSOCIATED WITH CIGARETTES UNTIL SHE WAS DIAGNOSED WITH BRONCHITIS IN 1998.

AND WE WILL BRING YOU IN THIS CASE A PSYCHIATRIST WHO WILL EXPLAIN THESE CONCEPTS TO YOU, AND IN MORE DETAIL. BUT THE EVIDENCE WILL BE THAT MRS. WHITELEY SIMPLY DOESN'T SATISFY THE CRITERIA THAT PSYCHIATRISTS USE TODAY TO DETERMINE WHETHER OR NOT SOMEONE IS SUBSTANCE DEPENDENT.

AS MR. HARDY SUGGESTED TO YOU, THE EVIDENCE WILL BE THAT MRS. WHITELEY IS A STRONG WOMAN. SHE IS AN INDEPENDENT WOMAN. SHE IS AN INTELLIGENT WOMAN. SHE IS A WOMAN WHO CAN ACCOMPLISH THINGS THAT SHE WANTS TO ACCOMPLISH. THE EVIDENCE WILL BE THAT HAD SHE WANTED TO STOP SMOKING BEFORE 1998, SHE WOULD HAVE BEEN ABLE TO DO SO. AS SHE TOLD HER DOCTORS, SHE SIMPLY DID NOT WANT TO STOP SMOKING IN THE 1970S, THE 1980S OR IN 1990S, UNTIL SHE WAS DIAGNOSED WITH BRONCHITIS.

TURNING TO THE LAST TOPIC. THE EVIDENCE WILL BE

THAT THE MARKETING, PROMOTIONAL AND ADVERTISING ACTIVITIES OF PHILIP MORRIS AND R.J. REYNOLDS ARE NOT DIRECTED AT ATTEMPTING TO CONVINCE NONSMOKING, UNDERAGE YOUTH TO BEGIN SMOKING AND HAD NOTHING TO DO WITH MRS. WHITELEY'S DECISION TO BEGIN SMOKING. IN FACT, THE EVIDENCE WILL BE THAT ADVERTISING DOES NOT WORK THAT WAY.

THERE ARE A NUMBER OF COUNTRIES AROUND THE WORLD WHO HAVE CHOSEN TO BAN CIGARETTE ADVERTISING. AND WHEN THEY'VE DONE SO, PARADOXICALLY SOMETIMES THE RATE OF SMOKING AMONG UNDERAGE SMOKERS ACTUALLY GOES UP. SOMETIMES IT GOES DOWN, SOMETIMES IT GOES UP, SOMETIMES IT DOESN'T CHANGE.

THE EVIDENCE WILL BE THAT THERE IS NO CLEAR LINK BETWEEN THE PRESENCE OF CIGARETTE ADVERTISING AND THE INCIDENCE OF SMOKING AMONG UNDERAGE PEOPLE.

NOW, SCIENTISTS HAVE STUDIED WHY UNDERAGE SMOKERS BEGIN SMOKING. AND MR. HARDY BEGAN TALKING WITH YOU ABOUT THIS, AND I'LL BE VERY BRIEF. BUT WHAT THEY FOUND IS THAT UNDERAGE NONSMOKERS BEGIN SMOKING BECAUSE OF PEER AND FAMILY INFLUENCES, BECAUSE OF CURIOSITY, OUT OF AN EXPRESSION OF REBELLIOUSNESS, OUT OF A DESIRE TO ACT GROWN-UP, BECAUSE PEOPLE AROUND THEM. AND THEY HAVE FOUND THAT THE SINGLE MOST PREDICTIVE FACTOR OF WHETHER A CHILD WILL BEGIN SMOKING IS WHETHER OR NOT THEIR BEST FRIEND SMOKES.

MRS. WHITELEY ILLUSTRATES ALL THIS VERY WELL. SHE WILL TELL YOU THAT SHE BEGAN SMOKING BECAUSE SHE WAS INFLUENCED BY HER PEERS. SHE WANTED TO FIT IN WITH HER FRIENDS, WHO WERE SMOKING. THAT SHE HAD SEEN HER GRANDMOTHER, WHOM SHE ADMIRED VERY MUCH, SMOKING. THAT

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KNEW THAT HER PARENTS HAD BEEN FORMER SMOKERS. SHE HAD AN OLDER SISTER THAT SMOKED. SHE WILL TELL YOU THAT SHE WAS CURIOUS ABOUT WHAT IT WAS LIKE TO SMOKE. SHE WILL TELL YOU THAT SHE WAS IN A HURRY TO GROW UP AND SHE WANTED TO ACT GROWN-UP.

AND MRS. WHITELEY WILL TELL YOU THAT SHE BEGAN SMOKING CIGARETTES WHEN HER FRIEND, THE GIRL NEXT DOOR, OFFERED HER A CIGARETTE AND OFFERED TO TEACH HER HOW TO SMOKE THAT CIGARETTE.

NOTHING THAT PHILIP MORRIS OR R.J. REYNOLDS DID THROUGH ADVERTISING, PROMOTION OR MARKETING HAD ANYTHING TO DO WITH HER DECISION TO SMOKE THAT FIRST CIGARETTE.

ALSO, THE FIRST BRAND THAT MRS. WHITELEY BEGAN SMOKING ON A REGULAR BASIS WAS THE MARLBORO BRAND. SHE WILL TELL YOU THAT SHE BEGAN SMOKING THAT BRAND BECAUSE HER PERCEPTION WAS THAT THAT WAS THE BRAND THAT A LOT OF HER FRIENDS WERE SMOKING. AGAIN, SHE WILL TELL YOU THAT SHE RECALLS NO INFLUENCE OF THE MARKETING EFFORTS OF THESE COMPANIES TO CAUSE HER TO START USING THAT BRAND.

ALTHOUGH MARLBORO WAS HER REGULAR BRAND, WHEN SHE WAS AN UNDERAGE SMOKER, SHE ALSO SMOKED CAMEL CIGARETTES FROM TIME TO TIME. AND SHE WILL TELL YOU THAT THE REASON SHE SMOKED CAMEL CIGARETTES WAS BECAUSE SHE HAD A BOYFRIEND WHO WAS A BIKER WHO SHE THOUGHT LOOKED TOUGH AND HE SMOKED CAMEL CIGARETTES. AND SHE WANTED TO BE MORE LIKE HIM, SO SHE SMOKED CAMEL CIGARETTES TO BE LIKE HIM.

MR. BROWN MENTIONED TO YOU THIS MORNING THAT THERE HAVE BEEN SOME STUDIES THAT HAVE SHOWN THAT INCIDENCES

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OF SMOKING AMONG UNDERAGE CHILDREN HAS GONE UP IN RECENT YEARS. SOMETIMES IT GOES UP, SOMETIMES IT GOES DOWN. BUT WHEN IT BEGAN GOING UP IN THE MID-1990S, THE UNITED STATES GOVERNMENT AND OTHERS BEGAN STUDYING WHY IT WAS GOING UP. AND THEY FOUND THAT IT WASN'T ONLY SMOKING THAT WAS GOING UP. IT WAS A NUMBER OF RISKY BEHAVIORS. FOR EXAMPLE, THEY FOUND THAT UNDERAGE CHILDREN WERE DRINKING MORE ALCOHOL. THEY FOUND THAT UNDERAGE CHILDREN WERE MORE SEXUALLY ACTIVE AND OFTEN SEXUALLY ACTIVE IN AN UNPROTECTED MANNER. THEY FOUND THAT UNDERAGE CHILDREN WERE SMOKING MORE MARIJUANA, THAT THEY WERE CARRYING FIREARMS TO SCHOOL AT AN INCREASING RATE. IN FACT, UNDERAGE CHILDREN WERE ATTEMPTING SUICIDE AT A RATE HIGHER THAN EVER OBSERVED BEFORE.

OF COURSE, THERE ARE NO EXPLANATIONS TO BE FOUND FOR THOSE ACTIVITIES IN THE ADVERTISING OR PROMOTION OF ANY CORPORATION. THAT IS SOMETHING THAT IS STILL BEING STUDIED. IT'S NOT UNDERSTOOD WHY, BUT IT SEEMS A NUMBER OF THOSE TYPE OF RISKY BEHAVIORS AMONG TEENS THAT ARE OBSERVED

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TO BE CLUSTERED TOGETHER HAVE BEEN INCREASING IN THE 1990S.

YOU WERE SHOWN THIS MORNING AN ADVERTISEMENT FOR WINSTON THAT WAS ON THE FLINTSTONES CARTOON AND THE CLAIM WAS MADE --TWO CLAIMS WERE MADE. THE FIRST, IT WAS SAID THAT THAT WAS EVIDENCE THAT R.J. REYNOLDS WAS TARGETING CHILDREN WITH THEIR WINSTON ADVERTISEMENTS.

SECOND, THE CLAIM WAS MADE THAT MRS. WHITELEY REMEMBERED SEEING THOSE ADS AS A CHILD.

I THINK THE EVIDENCE WILL BE VERY CLEAR THAT REYNOLDS WAS NOT TARGETING CHILDREN WITH THOSE

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ADVERTISEMENTS. I THINK THE EVIDENCE WILL ALSO BE VERY CLEAR THAT IT'S UNLIKELY THAT MRS. WHITELEY REMEMBERS THOSE TELEVISION SHOWS, AND I'LL TELL YOU WHY.

I HAVE HERE REPRODUCED ANNOUNCEMENTS OF THE PREMIER EPISODE OF THE FLINTSTONES CARTOON AND IT BEGAN IN 1960. I HAVE REPRODUCED ANNOUNCEMENTS FROM BOTH THE NEW YORK TIMES AND TV GUIDE, THE END OF SEPTEMBER, EARLY OCTOBER 1960.

THE FIRST THING I WANT TO POINT OUT IS THAT WHEN THE FLINTSTONES WAS INTRODUCED, IT WAS INTRODUCED AS AN ADULT CARTOON. AS YOU WILL SEE IN BOTH ADS, IT'S ADVERTISING AS A TV CARTOON FOR ADULTS, AN ADULT COMEDY IN CARTOON FORM. IT WAS A CARTOON MODELED AFTER JACKIE GLEASON AND THE HONEYMOONERS.

SECOND, YOU MAY NOTICE THE TIME SLOT THAT THE SHOW WAS IN. IT WAS SHOWN AT 8:30 P.M. IN THE EARLY 1960S, THAT'S PRIME TIME FOR ADULT VIEWING. THAT'S NOT A TIME IN WHICH YOU WOULD TARGET A MINOR WITH AN ADVERTISEMENT.

THIRD, THE EVIDENCE IN THIS CASE WILL BE THAT WINSTON ADVERTISED ON THE FLINTSTONE CARTOONS ONLY BETWEEN 1960 AND 1962. MRS. WHITELEY WOULD HAVE BEEN THREE YEARS OLD WHEN WINSTON ADS WERE NO LONGER INCLUDED ON THE FLINTSTONE CARTOON. AND THAT WHEN THE FLINTSTONE SHOW WAS MOVED, AS WE ALL KNOW THAT IT WAS, TO A SATURDAY MORNING CARTOON FOR CHILDREN, THE ADS FOR WINSTON CIGARETTES WERE TAKEN OFF OF THE PROGRAM AND NEVER SHOWN AGAIN.

YOU MAY ALSO NOTICE THAT THE COMPANY SPONSOR FOR THIS SHOW WAS ALKA-SELTZER AND ONE A DAY VITAMINS, AND THE

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CHARACTER THAT ALKA-SELTZER USED THEIR ADVERTISEMENTS WAS A CHARACTER WAS KNOWN AS SPEEDY ALKA-SELTZER, A CARTOON CHARACTER, WHICH IS MY LAST POINT.

MR. BROWN SUGGESTED THAT MERE USE OF A CARTOON CHARACTER IS EVIDENCE THAT THE ADVERTISER IS TARGETING THE YOUTH MARKET. THE EVIDENCE WILL BE THAT CARTOON CHARACTERS ARE USED TO ADVERTISE ADULT PRODUCTS ON A FREQUENT BASIS. THE PINK PANTHER IS USED BY OWENS-CORNING TO ADVERTISE FIBERGLASS INSULATION. GARFIELD THE CAT IS USED BY EMBASSY SUITES TO ADVERTISE HOTEL ROOMS. PEANUTS CHARACTERS SUCH AS SNOOPY, LUCY, CHARLEY BROWN ARE USED BY METLIFE INSURANCE

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TO ADVERTISE INSURANCE AND MUTUAL FUNDS. MR. CLEAN IS A CHARACTER CREATED BY PROCTOR & GAMBLE TO USE TO ADVERTISE CLEANING PRODUCTS. THE EVIDENCE WILL BE THAT MANUFACTURERS HAVE FOUND IT EFFECTIVE TO USE CARTOONS FROM TIME TO TIME TO ADVERTISE ADULT PRODUCTS TO ADULTS.

CIGARETTE ADVERTISING IS REGULATED BY THE FEDERAL TRADE COMMISSION, WHICH HAS JURISDICTION AND OVERSIGHT OVER CIGARETTE ADVERTISING. IN ADDITION, THE COMPANIES HAVE FOR MANY YEARS ADHERED TO A VOLUNTARY CODE THAT LIMITS BOTH THE CONTENT AND THE PLACEMENT OF THEIR ADVERTISEMENTS.

FOR EXAMPLE, FOR OVER 40 YEARS, PHILIP MORRIS AND R.J. REYNOLDS HAVE USED ONLY ADULT MODELS IN ITS ADVERTISEMENTS. FOR 30 YEARS, PHILIP MORRIS AND R.J. REYNOLDS HAVE INCLUDED NO TESTIMONIALS FROM ATHLETES, OR OTHER CELEBRITIES IN THEIR ADVERTISEMENTS. THE PUBLICATIONS THAT THEIR ADS ARE PLACED IN ARE PUBLICATIONS THAT ARE TARGETED AT AUDIENCES OVER 21 YEARS OF AGE.

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SINCE 1971, THERE HAVE BEEN NO CIGARETTE ADVERTISEMENTS ON EITHER TELEVISION OR RADIO, WHICH ARE THE MEDIA THAT ARE MOST ACCESSIBLE TO CHILDREN. THE EVIDENCE WILL BE THAT PHILIP MORRIS AND R.J. REYNOLDS DO NOT MARKET THEIR PRODUCTS TO CHILDREN AND DO NOT WANT CHILDREN TO SMOKE THEIR PRODUCTS. IT'S AGAINST THE LAW AND AGAINST POLICY FOR ANYONE AT EITHER PHILIP MORRIS OR R.J. REYNOLDS TO DO ANYTHING THAT WOULD ENCOURAGE A CHILD TO BEGIN SMOKING. AND THE EVIDENCE WILL BE VERY CLEAR THAT NOTHING THESE COMPANIES DID INFLUENCED MRS. WHITELEY TO BEGIN SMOKING.

THANK YOU VERY MUCH FOR YOUR PATIENCE, AND I LOOK FORWARD TO PRESENTING THE EVIDENCE TO YOU ON THESE ISSUES AS WE GO FORWARD. THANKS.

THANK YOU, YOUR HONOR.

THE COURT: OKAY. MR. ROSSE, I EXPLAINED TO THE JURY EARLIER THAT YOU CAN, IF YOU CHOOSE, RESERVE YOUR OPENING STATEMENTS UNTIL THE START OF THE PRESENTATION OF THE EVIDENCE ON YOUR CASE. AND I UNDERSTAND THAT IS WHAT YOU WISH TO DO?

MR. ROSSE: YES, YOUR HONOR.

THE COURT: OKAY. LET ME JUST TALK TO THE LAWYERS REAL QUICKLY AT A SIDEBAR CONFERENCE ABOUT TOMORROW'S SCHEDULE AND THEN I'M GOING TO LET YOU GO IN A MINUTE. I WANT TO FIND OUT WHAT OUR HOURS ARE GOING TO BE FOR TOMORROW.

(COURT AND COUNSEL CONFER OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: OKAY. WE ARE BACK ON THE RECORD.

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HAVE GOT A LITTLE BIT OF WORK TO DO WITH THE LAWYERS BEFORE WE START WITH THE PRESENTATION OF THE EVIDENCE TOMORROW MORNING. I AM GOING TO MEET WITH THEM FOR A FEW MINUTES TONIGHT, AFTER YOU LEAVE AND THEN FOR A FEW MINUTES TOMORROW MORNING, BEFORE YOU ARRIVE.

AND I'M GOING TO TRY, THROUGHOUT THE TRIAL, TO THE EXTENT THAT WE HAVE THESE KIND OF ISSUES, AS I TOLD YOU DURING THE JURY SELECTION PROCESS, TO DO THIS ON OUR TIME, SO THAT YOU DON'T ARRIVE AND THEN HAVE TO WAIT.

SO WHAT I'M GOING TO ASK YOU TO DO TOMORROW IS TO START AT 10:00 O'CLOCK IN THE MORNING. I WILL BE DONE WITH THE WORK THAT I NEED TO DO WITH THE LAWYERS BY THEN, AND YOU WON'T HAVE TO WAIT FOR.

WHAT I NEED TO ASK YOU, IN TURN, IS PLEASE BE HERE PROMPTLY BY 10:00 O'CLOCK. I WANT TO GET US IN THE PRACTICE WHERE WE START AT THE APPOINTED HOUR. I'M GOING TO DO MY BEST NOT TO GIVE YOU AN UNREALISTIC STARTING TIME. AND I WOULD ASK YOU, IN TURN, TO PLEASE BE HERE AT THAT TIME. AND I THINK THAT THAT WILL SERVE EVERYBODY VERY WELL.

OKAY. OVER THE EVENING, DON'T DISCUSS THE CASE WITH ANYONE, DON'T LET ANYONE DISCUSS IT WITH YOU. PLEASE DON'T FORM OR EXPRESS ANY OPINIONS OR VIEWS ABOUT THE CASE.

HAVE A GOOD EVENING. WE'LL SEE YOU AT 10:00 O'CLOCK SHARP TOMORROW.

(THE PROCEEDINGS ADJOURNED AT 4:55 P.M.)

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